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APPENDIX

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-161

ELLIOT L. RICHARDSON, *Secretary of Health, Education and Welfare, Appellant*

v.

RADIE WRIGHT, *et al.*

No. 70-5211

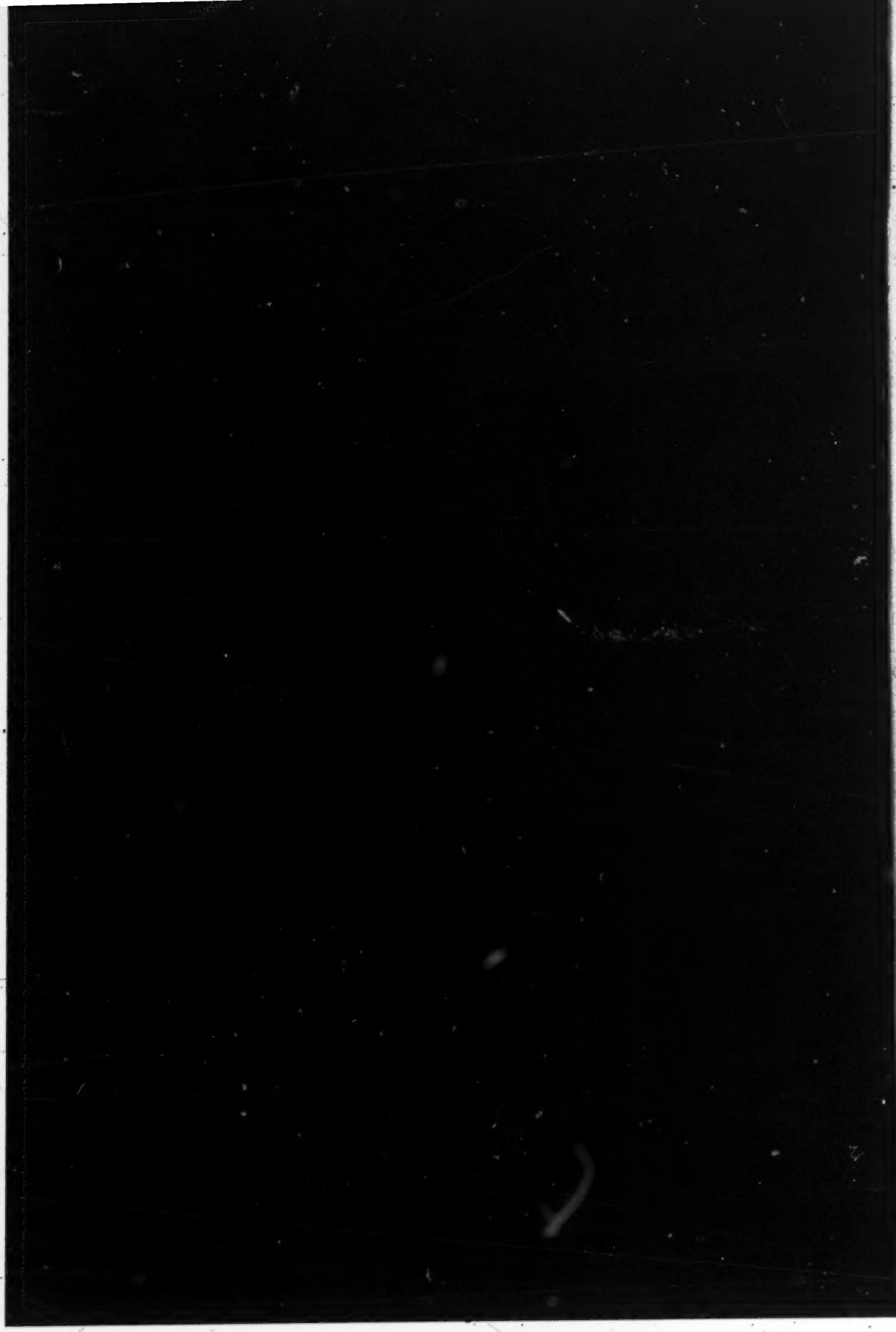
RADIE WRIGHT, *et al., Appellants*

v.

ELLIOT L. RICHARDSON, *Secretary of Health, Education and Welfare*

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED MAY 10 AND 11, 1971
PROBABLE JURISDICTION NOTED OCTOBER 12, 1971



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Relevant Docket Entries

No. 1457-70 in the United States District Court for the District of Columbia

Date	Filings—Proceedings
1970	
May 13	Complaint seeking declaratory and injunctive relief and requesting a three-judge court, with attachments, filed
	Motion for leave to file in forma pauperis, with affidavit and points and authorities, filed
	Motion for leave to file in forma pauperis granted by McGuire, J.
	Motions for temporary restraining order and preliminary injunction, with affidavit, points and authorities, and attachments, filed
	Motion for convening a three-judge court, with points and authorities, filed
	Motion for certification of action as maintainable as a class action, with points and authorities, filed
May 14	Temporary restraining order entered by Gasch, J.
May 18	Affidavit of Paul Merlin filed
June 16	Defendant's opposition to motions for preliminary injunction and for convening a three-judge court and defendant's motion to dismiss or for summary judgment, with statement of material facts, affidavit, and points and authorities, filed
June 25	Plaintiff's reply to defendant's opposition, plaintiff's opposition to defendant's motion to dismiss, and plaintiff's cross-motion for summary judgment, with statement of mate-

Date	Filings—Proceedings
1970	
	rial facts, opposition to defendant's statement of material facts, affidavits, and points and authorities, filed
June 30	Request by Gasch, J. to the Chief Judge, United States Court of Appeals, for the designation of a panel of three judges
July 2	Designation by Wright, Acting Chief Judge, United States Court of Appeals, of Robb, C.J., Matthews, Sen. D.J., and Gasch, D.J. as the panel to hear and determine the matter
July 17	Motion of John Dillard Atkins, Jr. for leave to intervene as party plaintiff, with points and authorities, complaint, attachments and affidavits, filed
August 20	Defendant's opposition to motion for leave to intervene and to plaintiff's motion for certification of action as maintainable as a class action, filed
August 21	Order of Gasch, J. granting motion for leave to intervene as party plaintiff and motion for certification of action as maintainable as a class action
August 24	Affidavit of Bernard Popick, in support of defendant's opposition, filed
August 25	Hearing conducted before Robb, C.J., Matthews, Sen. D.J., and Gasch, D.J.; action taken under advisement
1971	
January 6	Opinion by Gasch, D.J., concurred in by Robb, C.J., and dissented to in part by Matthews, Sen. D.J.
February 12	Order of Gasch, J. declaring 42 U.S.C. 425 unconstitutional, prohibiting the suspension without adequate notice and opportunity to

Date	Filings—Proceedings
1971	
	participate in the determination proceedings of the disability benefits of any social security beneficiary, including plaintiff, and granting plaintiff's motion for summary judgment and denying defendant's motion for summary judgment
March 1	Defendant's motion for a stay pending appeal, with points and authorities, filed
March 10	Plaintiff's opposition to motion for a stay pending appeal, with points and authorities, filed
March 12	Plaintiff's and intervenor plaintiff's notice of appeal from order of February 12, 1971, filed
	Defendant's notice of appeal from order of February 12, 1971, filed
March 24	Order of Robb, C.J., Matthews, Sen. D.J., and Gasch, D.J. staying order of February 12, 1971 pending appeal on the condition that plaintiff continue to receive social security disability benefits until his eligibility is suspended in accordance with the procedures outlined in the January 6, 1971 opinion
	No. 70-161 in the United States Supreme Court
1971	
May 11	Appellant Richardson's jurisdictional statement filed
October 12	Order of Court noting probable jurisdiction and consolidating the case with No. 70-5211
	No. 70-5211 in the United States Supreme Court
1971	
May 10	Appellant Wright's and intervenor appellant Atkins' jurisdictional statement, with

Date	Filings—Proceedings
1971	
	motion for leave to proceed in forma pauperis, filed
June 11	Appellee Richardson's memorandum in response filed
June 17	Appellants' response to appellee's memorandum filed
October 12	Order of Court noting probable jurisdiction, granting appellants leave to proceed in forma pauperis, and consolidating the case with No. 70-161

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RADIE P. WRIGHT and CLARA LITTLE WRIGHT, on their own behalf and as next of friend to their infant child CLARENCE EDWARD, and on behalf of all others similarly situated, *Plaintiffs,* v. ROBERT H. FINCH, individually and in his capacity as Secretary of Health, Education and Welfare, *Defendant.*	Civil Action No.

COMPLAINT

(Request for Three-Judge Court)

I

This is an action seeking declaratory injunctive relief to protect plaintiffs' rights under Title II of the Social Security Act, 42 U.S.C. Secs. 401 *et seq.*, and regulations promulgated thereunder, and the due process clause of the Fifth Amendment to the United States Constitution. This action arises under the Constitution and laws of the United Sates, including the Fifth Amendment to the Constitution and 42 U.S.C. Secs. 402(d) and 423.

II

Jurisdiction of this court is invoked pursuant to 11 D.C. Code, Section 521 (1967 ed.) and to 28 U.S.C., Section 1331, 1343(4), 1361, 2201, 2282, and 2284. The amount in controversy exceeds the sum of $10,000.00 exclusive of interest and costs.

III

This is an appropriate case for the convening of a three-

judge court, pursuant to 28 U.S.C. Secs. 2282 and 2284, in that plaintiffs seek an injunction against the enforcement, operation and execution of Acts of Congress, 42 U.S.C. Secs. 425, 405(b), 421(a) and 421(d) (a copy of which is attached hereto as Exhibit A), insofar as these statutes authorize or require suspension on termination of financial benefits prior to granting adequate notice and opportunity to be heard, on grounds of their repugnance to the due process clause of the Fifth Amendment of the Constitution of the United States.

IV

This action seeks an injunction and declaratory judgment declaring unconstitutional and restraining the enforcement of the aforesaid Acts of Congress, on their face and as applied and interpreted by defendant, on the grounds that said statutes, and actions taken pursuant thereto, deny to plaintiffs due process of law guaranteed by the Fifth Amendment to the United States Constitution, in that said statutes deny to plaintiffs reasonable and adequate notice of the grounds of termination of their Disability Insurance benefits, and deny to plaintiffs an opportunity for a fair and proper evidentiary hearing prior to the termination of their Disability Insurance benefits.

V

Plaintiff Radie Wright is an adult citizen of the United States and has been a resident of the District of Columbia since 1950. Plaintiff Clara Little Wright has been married to plaintiff Radie Wright for 21 years. Plaintiff Clarence Edward Wright, age 17, is the minor child of Radie and Clara Wright and has lived with them at their residence located at 1249 Half Street, S.W., Washington, D.C.

Plaintiff Radie Wright has a history of physical disability including portal cirrhosis, osteroarithritis of the knees, gastritis with Laennec's cirrhosis, hypercholesterol anemia, decompensated cirrhosis, pancreatic hermatemsis and hepatic decompensation. He applied for Social Security and in May 1966 on the basis of a determination, pursuant to 42 U.S.C. Sec. 423(d)(1)(A), of his "inability to engage in any substantial gainful activity by reason of (a) medically determinable physical or mental impairment which

can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months" defendant commenced payments for the benefit of plaintiff Radie Wright and his wife and children.

VII

Plaintiffs are members of a class in which all members have been found entitled to receive Old Age, Survivors, and Disability Insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-429. All of the members of this class face peremptory, *ex parte* termination of their payments upon any administrative determinations of ineligibility prior to being afforded an opportunity for an evidentiary hearing. The authority to terminate payment and then grant an opportunity for a hearing is granted by 42 U.S.C. §§ 405(b), 421(a), and 421(d), and is in violation of rights guaranteed under the Due Process Clause of the Fifth Amendment. A substantial portion of this class, including the named plaintiffs face peremptory, *ex parte* suspension of benefits if the defendant believes they "may have ceased to be under a disability", pending his determination of whether "disability has ceased or until the Secretary believes that such disability has not ceased" as authorized by 42 U.S.C. Sec. 425. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all persons constituting the above class who are similarly situated. The persons in the class are so numerous that joinder of all members is impractical; there are questions of law or fact common to the class; the claims of the representative parties are typical of the class; and the representative parties will fairly and adequately protect the interests of the class. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class; adjudications with respect to individual members of the class would, as a practical matter, be dispositive of other members not parties to the adjudications; the questions of law and fact common to the members of the class predominate over any questions affecting only individual members; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VIII

Defendant Robert Finch is the Secretary of Health, Education and Welfare and, as such, is charged with the administration of Title II of the Social Security Act, 42 U.S.C. Secs. 401 *et seq.*; and in particular with the determination of entitlement to benefits on the basis of disability pursuant to 42 U.S.C. Secs. 402(d) and 423.

IX

Title II of the Social Security Act, 42 U.S.C. Sec. 401 *et seq.*, creates a program of Disability Insurance under which individuals who have accumulated certain quarters of coverage and suffer a totally disabling impairment of enduring character become thereby entitled to earning-replacement benefit payments for themselves and their dependents. Persons who meet the statutory criteria, as interpreted in the Department of Health, Education and Welfare regulations, receive Disability Insurance payments as a matter of statutory entitlement.

X

Plaintiff Radie Wright began full-time work at age 14 and, for the most part, maintained gainful employment as a heavy and unskilled laborer. His last place of employment was with the Magnus and Lawson Construction Co., Colesville Rd., Silver Spring, Md., in 1965.

XI

Plaintiff Radie Wright left his position with Magnus and Lawson Construction Co. in 1965 because of a severe hemorrhage which led to immediate hospitalization for approximately five weeks. During that time, he was treated for a GI hemorrhage, chronic gastritis with Laennec's cirrhosis, hepatic decompensation and possible pancreatitis. Plaintiff left the hospital on October 20, 1965 and has continued medical treatment at the medical clinic at Freedman's Hospital on a regular basis, making visits twice a month. Due to his physical condition at that time, it was impossible for him to continue employment as an unskilled laborer. In early 1966, plaintiff made application for Social Security Disability benefits on behalf of himself and his family. His application was accepted in May 1966.

XII

Plaintiff Radie Wright received monthly Social Security payments in the amount of $97.40 per month, for the support of himself with additional payments for his wife and children, commencing in May 1966 until February 1968, when his allowance was raised by statutory amendment to $110.10 per month. Plaintiff Radie Wright continued to receive Social Security payments in the amount of $110.10 per month until December 1969 when, because of a statutory amendment, he began receiving $126.70 per month, said amount continuing until termination by preemptory, *ex parte* action of the Defendant Secretary on April 14, 1970. Plaintiff Radie Wright received a letter (attached hereto as Exhibit B) dated April 14, 1970, which informed him in pertinent part as follows:

> Your benefit payments have been stopped because your trial work period expired. *We are withholding further payments until we can study the facts and decide whether you still meet the requirements for disability benefits.* We will let you know when this decision has been made and will tell you then whether payment can be started again. (Emphasis supplied)

XIII

By letter of his attorney (attached hereto as Exhibit C), dated April 10, 1970, plaintiff Radie Wright requested a hearing on the merits of his claim to disability benefits *prior to* any suspension or termination of his payments, stating, in pertinent part that:

> I represent Mr. Radie Wright in his efforts to prevent the suspension or termination of his Social Security disability pension without first having a hearing on the merits of his claims that he is entitled to continue to receive Social Security Disability benefits.
> . . . Mr. Wright was informed (by the Social Security Administration) that there was a strong likelihood that future checks would not be forthcoming because of the possibility that his previous employments may have disqualified him for benefits.
> Mr. Wright is unemployed and relies upon his disability benefits to support himself, his wife, and two

sons. Therefore, cessation of his pension would cause immediate dire financial difficulties and extreme hardship for himself and his family.

It is clear that if a suspension or termination occurs under these circumstances, Mr. Wright and his family will be compelled to suffer great hardship by having their sole source of income cut off without a prior hearing, with counsel, and the right to present evidence to support his position.

Therefore, I urge you to grant my client a hearing on the merits of his claim to disability benefits prior to any suspension or termination of his payments. Please let me know, by return mail, whether or not Mr. Wright will be sent a disability check during the first week of May, 1970. If Mr. Wright will not be sent his May check, please let me know, by return mail, when and where we can hold a hearing on the merits of his claim. This hearing must be scheduled far enough in advance to enable me to properly prepare Mr. Wright's position, and, clearly, it must be prior to the end of April.

On April 17, 1970 plaintiff received a letter from the Social Security Administration notifying him that his benefit payments have been stopped pending an *ex parte* determination and investigation so that "we (Social Security Administration) can study the facts and decide whether you still meet the requirements for disability benefits" (Exhibit B attached hereto). Plaintiff has as yet received no response to his letter of April 10, 1970 requesting a hearing prior to termination.

XIV

Plaintiff Radie Wright knows of no medical evidence which would establish his ability to work, and in fact, is medically unable to maintain gainful employment at this time. His doctors have advised him not to undertake regular employment. Mr. Wright obtains treatments at Freedman's Hospital in Washington, D.C. twice each month and takes several prescribed medications daily. A report of his medical condition prepared by the hospital on April 20, 1970 (attached hereto as Exhibit D) indicates that plaintiff suffers from, among other conditions, hyperten-

sion, abnormal cirrhosis of the liver, abnormal liver function, hepatomegaly and swollen liver. The medical report also states that Mr. Wright's major disability cannot be removed by treatment.

XV

Plaintiff Radie Wright, due to his state of health, is presently unable to maintain gainful employment and provide support for himself and his family. Accordingly, because of the loss of Social Security income, plaintiffs will suffer mental anguish and immediate, continuing and irreparable injury to their health.

XVI

Defendant's preemptory, *ex parte* action suspending or terminating plaintiffs' Social Security Disability Insurance benefits violates the Due Process Clause of the Fifth Amendment to the United States Constitution in that it effectively suspended or terminated and withholds benefits essential to life itself without affording plaintiff Radie Wright reasonable and adequate notice as well as an opportunity for a prior fair hearing.

XVII

Sections 405(b), 421(a), 421(d) and 425 of the Social Security Act 42 U.S.C. Sec. 405(b), 421(a), 421(d) and 425 are invalid and repugnant to the Due Process Clause of the Fifth Amendment to the United States Constitution insofar as they authorize or require the defendant Secretary to take preemptory, *ex parte* action suspending or terminating benefits without affording reasonable and adequate notice and an opportunity for a prior fair hearing.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this case;

2. Convene a three-judge Court to hear this cause;

3. Enter a Temporary Restraining Order and a Preliminary and Permanent Injunction (A) restraining the operation and enforcement of 42 U.S.C. Secs. 405(b), 421(a), 421(d) and 425 insofar as they authorize or require the defendant Secretary to put into effect the suspension or termination of Social Security Disability Insurance benefits to plaintiffs, and (B) requiring the defendant Secretary

to restore and continue benefit payments to plaintiffs until notice and opportunity for a hearing meeting Due Process standards are afforded;

4. Declare that 42 U.S.C. Secs. 405(b), 421(a), 421(d) and 425 are invalid as repugnant to the Due Process required by the United States Constitution insofar as they authorize or require termination of Social Security Disability Insurance benefits payments without adequate notice and prior opportunity for a fair hearing.

5. Certify plaintiffs and those who are similarly situated as a class, pursuant to Rule 23 of the Federal Rules of Civil Procedure in respect to all rights and liabilities involved in this action.

6. Declare the other rights and relations of the parties hereto;

7. Award Costs to plaintiffs; and

8. Enter such other and further relief as the Court may deem just and appropriate.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
Washington, D.C.
544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
36 N Street, S.E.
Washington, D.C.
544-5000

/s/ Edward E. Schwab
EDWARD E. SCHWAB
4300 Deane Avenue, N.E.
Washington, D.C.
397-4310

Attorneys for Plaintiffs

SUBSCRIBED AND SWORN to before me this 7th day of May 1970.

/s/ Frank L. Eccles
Notary Public, D. C.
My Commission Expires Dec. 31, 1972

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21241

Give Claim No. 578-56-2424HA
When Writing About Your Claim To:
Social Security Office
414 11th Street, N.W.
Washington, D.C. 20203
April 14, 1970

Radie P. Wright
1249 Half Street, Southwest
Washington, D.C. 20024

Your benefit payments have been stopped because your trial work period expired . We are withholding further payments until we can study the facts and decide whether you still meet the requirements for disability benefits. We will let you know when this decision has been made and will tell you then whether payments can be started again.

In the meantime, if you have any questions about your claim, please get in touch with your social security office. If you call in person, please take this notice with you.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL

Assistant Director Bureau of Disability Insurance

April 10, 1970

Mr. Bernard Popick
Director
Bureau of Disability Insurance
Post Office Box 1075
Baltimore, Maryland 21203

Re: Mr. Radie Wright
Social Security No. 578-56-2424

Dear Mr. Popick:

I represent Mr. Radie Wright in his efforts to prevent the suspension or termination of his Social Security disability pension without first having a hearing on the merits of his claim that he is entitled to continue to receive Social Security disability benefits.

In May, 1966, Mr. Wright began to receive monthly disability pension checks. In February, 1970, Mr. Wright complied with a request of the Social Security Administration and participated in an interview with Miss Karen Salvatore, a claims representative. At that meeting Mr. Wright was asked to describe the sources and amounts of any earnings he had received since the start of his disability allowance. Mr. Wright was informed that there was a strong likelihood that future checks would not be forthcoming because of the possibility that his previous employments may have disqualified him for benefits.

Mr. Wright is unemployed and relies upon his disability benefits to support himself, his wife, and two sons. Therefore, cessation of his pension would cause immediate dire financial difficulties and extreme hardship for himself and his family.

Through several telephone conversations with Miss Salvatore, a claims representative of the Social Security Administration, and with Mrs. Melba Lyons of your office, I have learned that Mr. Wright's disability status is under examination by the Continuing Investigation Unit of the Bureau of Disability Insurance. I have also learned that it is most probable that Mr. Wright will not receive his benefit check for May, 1970, because, before May the Bureau of Disability Insurance will either have made an initial

determination to terminate his benefits or will have suspended his benefits pending the issuance of an initial determination, either event preventing Mr. Wright's check from being sent to him.

It is clear that if a suspension or termination occurs under these circumstances, Mr. Wright and his family will be compelled to suffer great hardship by having their sole source of income cut off without a prior hearing, with counsel and the right to present evidence to support his position.

Therefore, I urge you to grant my client a hearing on the merits of his claim to disability benefits *prior to* any suspension or termination of his payments. Please let me know, by return mail, whether or not Mr. Wright will be sent a disability check during the first week of May, 1970. If Mr. Wright will not be sent his May check, please let me know, by return mail, when and where we can hold a hearing on the merits of his claim. This hearing must be scheduled far enough in advance to enable me to properly prepare Mr. Wright's position, and, clearly, it must be prior to the end of April.

Sincerely yours,

LY/ld

/s/ Leona Yurdin

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WELFARE
MEDICAL ELIGIBILITY DIVISION

MED

MEDICAL EXAMINATION REPORT

Appointment: Date / Hour	Name: Tulright, P Lodie
	Address: 1249 2 ST S.W.
	Birthdate: 3/3/23 · Sex: (M) F · Race: (W) N O · No. in Family:
SS Social Service Representative: O. C Comrie · Date: 11/20/	DC ID NO: 00[illegible] · Family: 01 · IND: 479 · Prog.

Reason for Referral: To determine degree of disability, diagnosis, prognosis & feasibility for rehabilitation

PHYSICAL EXAMINATION REPORT - (To be filled out by physician)

Diagnosis: (Indicate major and minor) 1. Hypertension
2. Gallstones
3. Cirrhosis of liver

Treatment: (Past and current) Aldactone
Diet
Digoxin
Multivitamin

Objective Findings: (Give report of X-rays, EKG's laboratory or other diagnostic tests, with dates. Use separate sheet if necessary)

Abnormal liver function
Hepatomegaly
Ascites

W-MED 208
ev Feb. 66

(OVER)

Characteristics of Major Disability: (Check appropriate items) Permanent.....
Temporary.....Stable.X..Slowly progressive.....
Improving.....

Can the Major Disability Be Moved By Treatment: ☐ Yes ☒ No

If yes, anticipated duration.....

Substantially Reduced By Treatment: ☒? Yes ☐ No

If yes, anticipated duration.....

Physical Capacities: (Under "Physical Activities" and "Working conditions" use symbols as follows:

(✓) No Limitation. (X) Limitation. (O) To be avoided.

Physical activities: Walking..X..Standing..X..Stooping..X..Kneeling..X..Lifting..X..
Reaching..X..Pushing..X..Pulling..X..Other(Specify).....

Working conditions: Outside..X..Inside..✓..Humid.....Dry..✓..Dusty..X..
Sudden temperature changes..X..Other(Specify).....

RECOMMENDATIONS:

☐ Hospitalization (Specify reasons and approximate duration).....

☐ Treatment (Specify type and approximate duration).....

☐ Special Facility (Specify personal care, nursing care, constant protective supervision).....

.....

REMARKS:

I hereby give consent for this information to be used with permission of the applicant, by the Public Assistance Division as needed in connection with its rehabilitative services to the applicant.

Freedmen's — Emmett Williams
(Printed or Typed Name of Physician or Organization) Signature

601 Bryant NW — 4-22-76
Address Date

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Radie Wright, being first duly sworn, depose and say that I am the plaintiff in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress, and that the issues which I desire to present are fully set forth in the motions for temporary restraining order and preliminary injunction and affidavits and memorandum in support thereof.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of this proceeding are true.

1. Are you presently employed?

I am not presently employed because I am physically disabled and am unable to hold a regular job.

From the last quarter of 1968 through December 1969 I was employed by the Shayne Brothers Corporation, 1401 W Street, N.E., Washington, D.C. My work for Shayne Brothers involved handling dead animals. I earned approximately $3,330.41. From October 1969 through December 1969 I also worked as a laborer for the Frank B. Joy Company, 817 Bunker Hill Road, N.E., Washington, D.C., and earned approximately $1,015.40. I have had no employment since December 1969. My last employment prior to the start of my work for the Shayne Brothers was in 1965 when I worked as a laborer for Magnus Lawson Corporation, Colesville Road, Silver Spring, Maryland.

2. Have you received within the past twelve months any income from business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

During the past twelve months I have been receiving Social Security Disability benefits. I have been receiving Disability benefits since 1966. From May 1966 through January 1968 my benefits were $97.40 per month. Because of my eligibility for Disability Insurance benefits, in May 1966 my son Radie Wright, Jr. began to receive Disability

Insurance benefits of $45.40 per month. I was payee for these payments. In January 1967 my wife Clara Little Wright also became entitled to Disability Insurance benefits because of my condition. Her benefits were $30.20 each month. Her entitlement caused Radie Jr.'s benefits to be reduced to $30.20 per month. In February 1968 as a result of statutory amendments, my payments were increased to $110.10 per month. Likewise, in February 1968 Radie Jr.'s and my wife's payments both became $34.20 each month. In May 1968 Mrs. Wright's and Radie Jr.'s benefits were terminated because he became 18 years old and was no longer in school.

In August 1966, along with Radie Jr.'s and my application for benefits, I also applied for benefits for my son Clarence Edward Wright. I never received payments as payee for him. Instead, the District of Columbia Department of Public Welfare became payee for him and received $55.10 per month effective May 1966 through December 1966. In January 1967, because of Mrs. Wright's entitlement, his payments were reduced to $34.20. The Social Security Administration later found that Mrs. Wright had received an overpayment for a period of one month when Radie Jr. was not living at home.

In March 1970, effective January 1970, as a result of further statutory changes my monthly check was increased to $127.70 and Clarence's benefits, which were still being paid to the Department of Public Welfare, were raised to $63.40 per month. On April 18, 1970 I received a letter from the Social Security Administration notifying me that in the future I would not receive benefit checks because the Social Security Administration has determined that I have exhausted my trial work period and that they are continuing to consider whether or not I still meet the requirements for Disability benefits.

3. Do you own any cash or checking or savings account?

I own no cash, checking or savings account.

4. Do you own any real estate, stocks, bonds, notes, automobile, or other valuable property (excluding ordinary household furnishings and clothing)?

I own no real estate, stocks, bonds, notes, automobile or other valuable property.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Dependent upon me for support are my wife, age 44, and my two sons, ages 17 and 19.

6. Out of my monthly disability benefits I also pay each month $33.00 for rent, approximately $44.00 for food stamps, approximately $20.00 for household supplies, approximately $20.00 for cleaning, laundry, hair cuts and clothing, and approximately $4.00 for transportation for myself and my wife for our clinic treatments and other needs.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

/s/ Radie P. Wright
RADIE P. WRIGHT

SUBSCRIBED AND SWORN TO BEFORE me this 7th day of May 1970.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Judge

/s/ Frank L. Eccles
Notary Public, D.C.
My Commission Expires Dec. 31, 1972

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs Radie P. Wright and Clarence Edward Wright move this Court for a temporary restraining order preventing the defendant Secretary from enforcing the provisions of 42 U.S.C. Sections 425, 405(b), 421(a) and 421(d) insofar as they authorize or require the defendant Secretary to suspend or terminate their receipt of monthly Disability Insurance benefits of $127.70 and $63.40, respectively, without first having afforded them an opportunity for an evidentiary hearing meeting the standards of Due Process of law on the merits of their claims to continued entitlement, pending a hearing and final determination of plaintiffs' motion for a preliminary injunction.

The grounds for this motion are that dire, immediate and irreparable injuries, losses and damages will result to the plaintiffs Radie P. Wright and Clarence Edward Wright, because of their losses of their sole sources of income, if the defendant Secretary is not enjoined from effectuating the suspension of their monthly Disability Insurance benefits of $127.70 and $63.40, respectively, before they have had an opportunity to have a Due Process hearing, as fully set forth in the verified complaint, motion for a preliminary injunction and affidavit and memorandum in support thereof, all of which are attached hereto and made a part hereof.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
Washington, D.C. 20003
LIncoln 4-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
36 N Street, S.E.
Washington, D.C. 20003
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/s/ Edward E. Schwab
EDWARD E. SCHWAB
4800 Deane Avenue, N.E.
Washington, D.C. 20019
399-4310

MOTION FOR PRELIMINARY INJUNCTION

Pending the full hearing and determination of this action, plaintiffs move this Court for a preliminary injunction:

1. Enjoining the defendant Secretary from enforcing the provisions of 42 U.S.C. Sections 425, 405(b), 421(a) and 421(d) insofar as they authorize or require the defendant Secretary to suspend or to terminate the payments of Old Age, Survivors and Disability Insurance benefits to recipients who have been found entitled to such benefits pursuant to 42 U.S.C. Sections 401 through 429, without the defendant Secretary having first afforded them opportunities for evidentiary hearings meeting the standards of Due Process of law;

2. And for a further order requiring the defendant Secretary to restore and continue benefit payments to all recipients of Old Age, Survivors and Disability Insurance benefits until the conclusions of evidentiary Due Process hearings on the merits of their claims to continued entitlements.

This motion is made on the grounds that before a full hearing can be held and without a preliminary injunction against the defendant secretary's enforcement of 42 U.S.C. Sections 425, 405(b), 421(a) and 421(d) and without an order restoring benefit payments to plaintiffs Radie P. Wright and Clarence Edward Wright, and all others in their class, plaintiffs will suffer irreparable injury because of their losses of their sources of income, as fully set forth in the complaint, affidavit and memorandum in support of this motion and their motion for a temporary restraining order, motion for certification as a class action and memorandum in support thereof, all attached hereto and made a part hereof.

Although this action has not yet been certified as a class action, it has been filed as such and, as shown in the attached motion for certification as a class action and memorandum in support thereof, this action meets all the requisites of a class action under Rule 23 of the Federal Rules of Civil Procedure. Since it is most likely this action will be certified as a class action, it is at this time appropriate to

grant the requested, injunctive relief for all members of the class.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
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LIncoln 4-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
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/s/ Edward E. Schwab
EDWARD E. SCHWAB
4800 Deane Avenue, N.E.
Washington, D.C. 20019
399-4310

Attorneys for Plaintiffs

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Radie Wright having been duly sworn depose and say:

1. I am an adult citizen of the United States and have been a resident of the District of Columbia since 1950. I am 47 years old and have been married to my wife Clara Little Wright since 1950.

2. We are the natural parents of two sons, Radie Wright, Jr. age 19 and Clarence Edward Wright, age 17. We reside at 1249 Half Street, S.W. and have lived there for the past 5½ years. I have completed the second grade in public school in Wadesboro, North Carolina.

3. I began full-time employment as a railroad construction worker in Wadesboro, North Carolina when I was approximately 14 years old. From that time until I became physically disabled in the fall of 1965 I worked as a laborer primarily carrying heavy objects or pushing heavy loads.

From about 1958 until the fall of 1965, when I became disabled, I worked for the Magnus Lawson Construction Company of 8634 Colesville Road, Silver Spring, Maryland. My job involved carrying bricks and operating a cement mixer.

4. In the fall of 1965 I suffered a hemorrhage and was admitted to Freedman's Hospital, in the District of Columbia. I was hospitalized for about five weeks and was warned by my doctors not to attempt to resume employment. Since that time I have been regularly receiving treatments at the Freedman's Hospital out-patient clinic.

5. Because of my poor health and upon the recommendations of my doctors I was compelled to stop working. Therefore in 1965 my wife was forced to obtain Public Assistance for myself and our family. My wife's check was approximately $147.00 per month. However, in May 1966, to remove us from Public Assistance, I began to receive Social Security benefits for myself and as payee for my son Radie Wright, Jr.

From May 1966 through January 1968 my benefits were $97.40 per month. My son Radie Jr.'s benefits were $45.30 during that period. Because of my disability and because Radie Jr. was living at home, in January 1967 my wife

began to receive Disability Insurance benefits of $30.20 per month. Her entitlement caused Radie Jr.'s benefits to be reduced to $30.20 per month.

As a result of statutory amendments in February 1968 my payments were increased to $110.10 per month and Radie Jr.'s and my wife's benefits rose to $34.20 each month. In May 1968 Radie Jr.'s and Mrs. Wright's benefits were terminated because he became 18 years old and was no longer living at home.

In August 1966, along with Radie Jr.'s and my applications for benefits, I also applied for benefits for my son Clarence Edward Wright. I never was payee for these benefits. Instead, the District of Columbia Department of Public Welfare became payee for him and effective from May 1966 received $55.10 per month until February 1968 when his benefits were reduced to $34.20 per month, because of Mrs. Wright's entitlement. The Social Security Administration later found that Mrs. Wright had received an overpayment for a period of one month when Radie Jr. was not living at home.

In March 1970, effective January 1970, as a result of further statutory changes my monthly check was increased to $127.70 and Clarence's benefits, which were still being paid to the Department of Public Welfare, rose to $63.40 per month.

6. I am presently unable to hold a regular job. My physical disabilities include hypertension, cirrhosis of the liver, abnormal liver function, swollen liver and hepatomegaly. I visit the Freedman's Hospital Clinic twice per month and receive extensive physical examinations. In addition, I take several medications daily. My doctors have continued to advise me not to work. My medical reports indicate that my disability will not be substantially reduced by treatment.

7. Despite my disabilities and while enduring great physical discomfort, to better provide for myself and my family I began working for the Shayne Brothers Corporation, 1401 W Street, N.E., Washington, D.C. In 1968 I earned $248.32 from Shayne Brothers. During the first quarter of 1969 I earned approximately $1,067.17 doing work for them. From April through June 1969 I earned from Shayne Brothers another $1,064.20. I continued to work for Shayne Brothers and earned approximately $789.48 from July through September 1969, and $162.24 from October through

December 1969. Therefore, my total earnings from Shayne Brothers has been approximately $3,330.41. In the last quarter of 1969 I also began to do janitorial work, primarily shoveling dirt, for the Frank B. Joy Company, 817 Bunker Hill Road, N.E., Washington, D.C. and earned approximately $1,015.40 during that period.

I have been unemployed since December 1969 and rely solely upon my Social Security Disability Insurance benefits to support myself and my family.

8. In early February 1970 in compliance with a request of the Social Security Administration I was interviewed by a claims representative concerning my presently disabled condition. The claims representative, among other things, asked me whether or not I had worked during 1968 and 1969, and if so, what was the nature of my employment and the amount of my earnings. I responded that I had worked from March 1968 through October 1969 as a laborer for Shayne Brothers Corporation and that from October 1969 through December 1969 I worked for Frank B. Joy Company as a sweeper. I was told by the claims representative that because of my earning my and my son's rights to receive disability benefits were being investigated by the Social Security Administration. The claims representative further stated that there was a very great likelihood we would not receive disability benefits in the future.

9. On April 18, 1970 I received a letter from the Social Security Administration notifying me that in the future I would not receive benefit checks because the Social Security Administration has determined that I have exhausted my trial work period and that it is continuing to consider whether or not I still meet the requirements for disability benefits.

10. Since my poor physical condition continues to prevent me from engaging in regular employment, I believe my family and I are entitled to continue receiving disability benefits. If my past employments have caused any overpayments, I believe we should have an opportunity to present our claims and determine what, if any, monies should be returned to the Social Security Administration. At a hearing we might also arrange a gradual repayment schedule that would enable my family and me to maintain our source of income during the repayment period. It is unfair to completely terminate our only means of livelihood with-

out a fair hearing and an opportunity to achieve a reasonable adjustment.

11. Furthermore, if my family's and my benefits are ended without a hearing, we will be greatly disadvantaged in any later efforts to obtain a review of the decision to suspend or terminate. Since our disability payments are our only sources of support, after cessation of benefits we will be forced to devote our energies to finding other means of subsistence. Therefore we will be unable to give proper attention to pressing our claims on their merits. Even if we later pursue a reconsideration of the termination, in the interim we will have suffered great and irreparable harm flowing from lack of money to buy the necessaries of life. A later hearing will not provide adequate compensation for these injuries.

/s/ Radie P. Wright
RADIE P. WRIGHT

SUBSCRIBED AND SWORN TO before me this 7th day of May 1970.

/s/ Frank L. Eccles
Notary Public

My Commission Expires: 12/31/72

[*Title Omitted in Printing*]

APPLICATION FOR CONVENING COURT OF THREE JUDGES

Plaintiffs, upon their complaint filed herewith, hereby make application for hearing of this cause for preliminary and permanent injunctive relief and for a declaratory judgment that Title 42, Sections 405(b), 421(a), 421(d) and 425 are repugnant to the Constitution of the United States insofar as they authorize or require the Secretary of Health, Education, and Welfare to terminate or suspend plaintiffs' Social Security payments prior to affording them an opportunity for a hearing on contested matters of fact or on the application of law to their situation, and therefore, without procedural due process of law, and other and further relief, and plaintiffs' motion for a preliminary injunction herein, before a three-judge court as required by Section 2282, Title 28, United States Code. They request that the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit be notified pursuant to Section 2284, Title 28, United States Code, of presentation of plaintiffs' application for declaratory, injunctive, or other relief in order that necessary designation of judges for said Court may be made.

/s/ Leona Yurdin
LEONA YURDIN
Neighborhood Legal Services Program
36 N Street, S.E.
Washington, D.C. 20003
544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
Neighborhood Legal Services Program
36 N Street, S.E.
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/s/ Edward E. Schwab
EDWARD E. SCHWAB
Neighborhood Legal Services Program
4800 Deane Avenue, N.E.
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399-4310

Attorneys for Plaintiffs

MOTION FOR CERTIFICATION OF ACTION AS MAINTAINABLE AS A CLASS ACTION

The plaintiffs, through counsel, move this Court for an order certifying this action for declaratory and injunctive relief maintainable under Rule 23(b)(1)(A); 23(b)(1)(B); or 23(b)(2) or 23(b)(3), as a class action on behalf of all recipients of Old Age, Survivors and Disability Insurance benefits. All members of this class face the danger of preemptory *exparte* termination of their benefit payments upon Administrative determinations of their ineligibilities prior to being afforded opportunities for evidentiary hearings, meeting the standards of Due Process of law on the merits of their claims to continued entitlements, in violation of their constitutional rights to Due Process of law, as authorized by 42 U.S.C. Sections 405(b), 421(a) and 421(d). Furthermore, a substantial portion of the members of this class also face preemptory *exparte* suspension of their Disability Insurance benefit payments, if the defendant Secretary believes that one of these recipients "may have ceased to be under a disability" pending his determination of "whether or not such individual's disability has ceased or until the Secretary believes such disability has not ceased", as authorized by 42 U.S.C. Section 425.

This action seeks:

(1) A temporary and permanent injunction against the defendant Secretary prohibiting him from enforcing the provisions of 42 U.S.C. Sections 405(b), 421(a), 421(d) and 425 insofar as they authorize or require the defendant Secretary to suspend or terminate the granting of Old Age, Survivors and Disability Insurance benefits to plaintiffs Radie P. Wright, Clarence Edward Wright and the other recipients of any of the above-mentioned insurances.

(2) A further order requiring the defendant Secretary to restore and continue benefit payments to plaintiffs until the conclusion of Due Process hearings on the merits of their claims to continued entitlements.

(3) And, for such other relief as the court deems proper.

As grounds for their motion plaintiffs state:

(1) The class of persons who are recipients of Old Age, Survivors and Disability Insurance benefits, and who face

the threat of preemptory *exparte* suspensions or terminations of their insurance benefits without Due Process evidentiary hearings on their claims to continued entitlements, are too numerous to make practicable joinder of all members in one action. However the identity of members of this class is readily ascertainable from the books and records of the defendant Secretary.

(2) Common questions of law and fact unite the claims of named plaintiffs and all members of the class, as more specifically described in plaintiff's attached memorandum of points and authorities in support of this motion.

(3) The claims of the named plaintiffs are typical of the claims of the class.

(4) The community of interest in questions of law and fact between named plaintiffs and the class assures fair and adequate representation of the class.

(5) Adjudications with respect to the claims of individual recipients concerning their constitutionally protected rights to continued receipt of benefits until the outcomes of Due Process hearings on the merits of their cases would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their abilities to protect their interests.

(6) Prosecution of separate actions by individual members of the class against the defendant Secretary to prevent him from enforcing the provisions of 42 U.S.C. Sections 425, 405(b), 421(a) and 421(d) would create the risk of inconsistent adjudications of the issues involved herein, as set out fully in the complaint and memorandum of points and authorities in support of this motion.

(7) Injunctive relief is appropriate herein because the unconstitutional actions of the defendant Secretary in suspending or terminating the monthly benefits of recipients of Old Age, Survivors and Disability Insurance, without affording them opportunities for prior Due Process hearings on the merits of their claims, denies these recipients Due Process of law, and thereby subjects them to irreparable injuries resulting from the loss of their incomes, as fully explained in the attached complaint, motions for a temporary restraining order and a preliminary injunction and affidavit and memorandum in support thereof.

(8) The questions of law and fact common to the mem-

bers of the class predominate over the questions affecting only individual members:

(9) Most recipients of Old Age, Survivors and Disability Insurance benefits have very meager financial resources, are unaware of their legal rights and are unable to vigorously press their claims. Moreover, relegation of their claims to individual litigations would result in an unreasonable multiplicity of suits and a corresponding burden on the court. These factors make a class action superior to all other methods for fairly and efficiently adjudicating the parties' rights.

/s/ Leona Yurdin
LEONA YURDIN
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/s/ E. Calvin Golumbic
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399-4310

[*Certificate of Service Omitted in Printing*]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RADIE P. WRIGHT, *et. al.*, *Plaintiffs*, v. ROBERT H. FINCH, *Defendant.*	CIVIL ACTION NO. 1457-70 Cash undertaking of plaintiff for $25.00 approved and filed May 19, 1970. ROBERT M. STEARNS, *Clerk* By Lemuel Patterson *Deputy Clerk*

[Filed 14 May, 1970, ROBERT M. STEARNS, *Clerk*]

TEMPORARY RESTRAINING ORDER

WHEREAS the Court has considered plaintiffs' complaint, motion for a temporary restraining order, and affidavit in support thereof, motion for a preliminary injunction, and it appears to the Court that plaintiffs Radie P. Wright and Clarence Edward Wright will suffer substantial irreparable injuries because of the losses of their sources of income, unless the Court now grants provisional relief pending a hearing and determination of plaintiffs' motion for a preliminary injunction, it is hereby:

1. ORDERED that the defendant Secretary Robert H. Finch, his agents and employees shall not put into effect or enforce the provisions of 42 U.S.C. Sections 425, 405(b), 421(a) and 421(d) insofar as they authorize or require the defendant Secretary to suspend or to terminate the Disability Insurance benefit payments of plaintiffs Radie P. Wright and Clarence Edward Wright, as authorized by 42 U.S.C. Sections 401 through 429, pending a hearing and final determination of plaintiffs motion for a preliminary injunction.

2. ORDERED that the defendant Secretary restore and continue Disability Insurance benefit payments, as determined by 42 U.S.C. Sections 402 through 403, and currently in the current amounts now being paid to plaintiff Radie P. Wright on behalf of plaintiff Clarence Edward Wright

pending a hearing and final determination of plaintiffs' motion for a preliminary injunction.

/s/ Oliver Gasch
United States District Court for the District of Columbia

DATE: May , 1970

Plaintiff shall give security in the sum of twenty-five dollars ($25.00) for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A TRUE COPY

ROBERT M. STEARNS, *Clerk*
By Lemuel Patterson
Deputy Clerk

[*Title Omitted in Printing*]

AFFIDAVIT OF PAUL MERLIN

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

I, Paul Merlin, being first duly sworn, depose and say as follows:

(1) I am Chief of Litigation, Social Security Division, Office of the General Counsel, Department of Health, Education and Welfare.

(2) In connection with the above captioned action I contacted this day by telephone Carl E. Spitler, Division of Management and Appraisal, Bureau of Disability Insurance, Social Security Administration, Department of Health, Education and Welfare, in Baltimore, Maryland, who advised me as follows:

(a) In 1969 there were approximately 40,000 cessations of disability under Title II of the Social Security Act.

(b) The average monthly benefits paid to disabled workers and their families amounted to approximately $250.00 per month per family.

(c) After initial determination, requests for reconsideration are processed in approximately 60 days.

(d) After reconsideration determinations requests for hearing are processed in 60 to 90 days.

(e) Based upon the foregoing estimates, I have been advised that if the Administration would have had to pay benefits to disabled workers and their families after a suspension or initial determination of cessation until the administrative hearing was held, the cost to the Social Security Trust Fund would have been $10,000,000 per month or $40,000,000 to $50,000,000 per year.

/s/ Paul Merlin
PAUL MERLIN

Subscribed and sworn to before me this 14th day of May, 1970.

/s/ Jeanne M. Swanson
Notary Public

[*Title Omitted in Printing*]

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND APPLICATION FOR CONVENING A THREE-JUDGE COURT AND DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Defendant, by his attorney, the United States Attorney for the District of Columbia, opposes plaintiffs' motion for a preliminary injunction and application for convening a three-judge Court and respectfully moves the Court to dismiss this cause for lack of jurisdiction over the subject matter. In the alternative, defendant moves the Court to grant summary judgment in its favor, on the ground there is no genuine issue of material fact and defendant is entitled to judgment as a matter of law.

In support of the motion for summary judgment, defendant files herewith the affidavit of Samuel E. Crouch, Deputy Director of the Bureau of Disability Insurance of the Social Security Administration, Department of Health, Education and Welfare. Defendant also incorporates by reference the affidavit of Paul Merlin, Chief of Litigation, Social Security Division, Office of the General Counsel, Department of Health, Education and Welfare, previously filed with the Court.

/s/
THOMAS A. FLANNERY
United States Attorney

/s/
JOSEPH M. HANNON
Assistant United States Attorney

/s/
LAWRENCE S. MARGOLIS
Assistant United States Attorney

OF COUNSEL

Paul Merlin
Chief of Litigation
Social Security Division
Office of the General Counsel
Department of Health,
Education and Welfare

[*Certificate of Service Omitted in Printing*]

[*Title Omitted in Printing*]

STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 9(h)

The material facts as to which there is no genuine issue are stated in the affidavit of Samuel E. Crouch, Deputy Director of the Bureau of Disability Insurance, Social Security Administration, Department of Health, Education and Welfare, and the affidavit of Paul Merlin, Chief of Litigation, Social Security Division, Office of the General Counsel, Department of Health, Education and Welfare (previously filed with the Court).

/s/
THOMAS A. FLANNERY
United States Attorney

/s/
JOSEPH M. HANNON
Assistant United States Attorney

/s/
LAWRENCE S. MARGOLIS
Assistant United States Attorney

OF COUNSEL

Paul Merlin
Chief of Litigation
Social Security Division
Office of the General Counsel
Department of Health,
Education and Welfare

[*Title Omitted in Printing*]

AFFIDAVIT OF SAMUEL E. CROUCH

BALTIMORE COUNTY
STATE OF MARYLAND } ss

I, Samuel E. Crouch, being duly sworn, depose and say as follows:

(1) I am the Deputy Director of the Bureau of Disability Insurance of the Social Security Administration, the Bureau of the Administration responsible for administering the Disability Insurance Program. In connection with my official duties I have custody of the claims folder of the plaintiff in this action. My examination of this folder reveals the following.

(2) The plaintiff, Radie Wright, who was born in March 1923, filed an application for disability insurance benefits on June 1, 1966. He attributed his inability to work to arthritis, high blood pressure, stomach ulcers, and a heart condition. He was unsure as to when his disability had begun and listed 1964 or 1965. In Item 21 of the application, he agreed to notify the Social Security Administration promptly if his medical condition improved, he went to work, or he applied for workmen's compensation benefits.

(3) In connection with the plaintiff's disability claim, medical evidence was received by the Administration from the Veterans Administration, the Department of Public Welfare and Freedmen's Hospital which showed that he had problems associated with chronic alcoholism including liver disease, arthritis, stomach inflammation and heart involvement. To obtain additional medical evidence necessary for a determination of the plaintiff's claim, the District of Columbia Department of Vocational Rehabilitation, the agency for the District of Columbia which renders disability determinations under section 221 of the Social Security Act, 42 U.S.C. 421 pursuant to agreement with the Secretary, arranged an examination by a consultant physician, Dr. J. P. Segal in September 1966. Dr. Segal considered plaintiff disabled due to liver disease.

(4) Accordingly, the District of Columbia Department of Vocational Rehabilitation and the Bureau of Disability Insurance of the Social Security Administration approved

plaintiff's application for benefits on October 7, 1966 at which time it was determined he had been under a disability from October 13, 1965. Accordingly, the plaintiff was awarded monthly benefits of $97.40 from May 1966, the first month following the 6 month waiting period. With passage of the 1967 Amendments his benefit rate was increased to $110.10 per month effective February 1968.

(5) After his award of benefits, the plaintiff did not advise the Administration that he was working. The Bureau of Data Processing and Accounts of the Social Security Administration which maintains earnings records of all individuals covered under the Act, checks earnings postings against the rolls of disability beneficiaries. In this way when earnings appeared on the plaintiff's account, the Bureau of Data Processing and Accounts advised the Bureau of Disability Insurance. These posting first revealed earnings of $569.26 for two quarters of 1968 and $1,067.17 for the first quarter of 1969. As a result, on February 2, 1970, the Bureau of Disability Insurance sent a Request for Field Investigation of Continuing Disability to the Social Security District Office in Washington, D.C. to clarify the plaintiff's current work status.

(6) Thereafter, the plaintiff was contacted by Miss Karen Salvatore, a claims representative of the Washington, D.C. District Office, on February 11, 1970. In a Report of Continuing Disability Interview, the plaintiff admitted in reply to Question V that he had worked since the established onset date of his disability. A Work Activity Report was also completed showing that he had been employed by Pepco and Shayne Brothers. However, the plaintiff's apparent poor memory and his difficulty in communicating, prevented the claims representative from obtaining anything except a very few details of the plaintiff's employment. Accordingly, the representative indicated further development of the work activity was necessary. Upon contact by the district office, a Statement of Employer form was completed by Shayne Brothers on February 12, 1970 showing wages paid to plaintiff in the amounts of $248.32 for the December 1968 quarter, $1,067.17 for the March 1969 quarter, $1,064.20 for the June 1969 quarter, $789.48 for the September 1969 quarter, and $162.24 for the December 1969 quarter. The employer stated they were in the refuse removal business and the plaintiff was a helper.

After Pepco (Potomac Electric Power Company) informed the Social Security Administration on February 18, 1970, that the plaintiff had not been in their employ, the plaintiff was recontacted. In a Statement of Claimant or Other Person prepared on March 4, 1970, he stated he had worked for F. B. Joy Company rather than Pepco. He also reported "I am not working now. I stopped working about October 1969. I have done no work since that time." The F. B. Joy Company completed a Statement of Employer on March 11, 1970 showing the plaintiff earned $1,015.40 for the December 1969 quarter. The company stated they were in the contracting business and the plaintiff was a laborer. A further breakdown of wages for this company, dated March 12, 1970 showed earnings of $75.20 for October 1969, $511.71 for November 1969, and $428.49 for December 1969.

(7) The district office in Washington, D.C., forwarded the file to the District of Columbia Department of Vocational Rehabilitation on March 16, 1970 for a disability determination. The State agency received the file on March 19, 1970 and concluded on March 25, 1970 that the plaintiff's disability ceased in August 1969 because he had demonstrated ability to engage in substantial gainful activity. Thereafter, the State agency forwarded the file to the Bureau of Disability Insurance for review of the cessation determination in accordance with section 221 of the Act, 42 U.S.C. 421. Upon receipt of the file, the Bureau of Disability Insurance, on April 3, 1970 issued a Request for Suspension of Termination of Benefits and on April 10, 1970 the Stop Payment Determination was prepared. By letter dated April 14, 1970, the plaintiff was notified that his payments had been stopped. On April 3, 1970, the Bureau of Disability Insurance also requested the Bureau of Data Processing and Accounts to furnish a detailed earnings record for the June and December 1968 quarters. This form, completed on April 14, 1970, indicated that plaintiff also had earnings in the June 1968 quarter from the United Contractors, Inc., in the amount of $240.00 and from the Interstate Restaurants, Inc., in the amount of $80.94, and in the December 1968 quarter from the S. J. Cohen Plumbing and Heating Corporation in the amount of $94.00.

(8) On April 15, 1970, the Bureau of Disability Insurance prepared a Request for Additional Evidence of Disability asking the Social Security District Office in Wash-

ington, D.C. to further develop the plaintiff's work in 1968. Thereafter, the district office received information from S. J. Cohen Plumbing and Heating Corporation dated May 1, 1970 showing plaintiff earned $94.00 in October 1968; from Interstate Restaurants, Inc. dated May 1, 1970 showing plaintiff earned no wages for the year 1968 under account number 578-16-2424; but wages of $42.40 under account number 577-70-0880, with a question mark, were listed for March 1970; and from Shayne Brothers dated May 6, 1970 showing plaintiff earned $248.32 in December 1968.

(9) To summarize, the cumulative quarterly earnings information for 1968 and subsequent years shows:

United Contractors, Inc. June 1968—$240.00 (not yet verified by employer contact)

Interstate Restaurants, Inc. June 1968—$80.94 (not yet verified by employer contact)

S. J. Cohen Plumbing and Heating Corporation December 1968—$94 (verified)

Shayne Brothers, Inc. December 1968—$248.32 (verified)

Shayne Brothers, Inc. March 1969—$1,067.17 (verified)

Shayne Brothers, Inc. June 1969—$1,064.20 (verified)

Shayne Brothers, Inc. September 1969—$789.48 (verified)

Shayne Brothers, Inc. December 1969—$162.24 (verified)

B. F. Joy Co., Inc. December 1969—$1,015.40 (verified)

Interstate Restaurants, Inc. March 1970—$42.40 (not yet verified by empolyer contact)

Based on the above information, the plaintiff had verified earnings of $342.32 for 1968 and $4,098.49 for 1969.

(10) In accordance with the court's order dated May 14, 1970, benefits for the plaintiff were reinstated on May 15, 1970 and May 16, 1970. Current payment to the plaintiff will be $126.70 per month from January 1970. Family benefits in this case have varied greatly both as to payees

and amounts because of changing dependency factors of the family. Present development is being undertaken in this respect.

/s/
SAMUEL E. CROUCH
Deputy Director
Bureau of Disability Insurance

Subscribed and sworn to before
me this 22nd day
of May 1970.

Wilson R. Touler
Notary Public
My Commission expires July 1, 1970

[*Title Omitted in Printing*]

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO HIS MOTION FOR A PRELIMINARY INJUNCTION AND APPLICATION FOR CONVENING A THREE-JUDGE COURT, OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff, by his attorneys, hereby replies to Defendant's opposition to his motion for a preliminary injunction and application for convening a three-judge court, opposes Defendant's motion to dismiss and, in the alternative, moves this Court on the pleadings, exhibits, affidavits and other papers, filed in this proceeding, and on the statement of material facts, as to which he contends there is no genuine issue, for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, on the grounds that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law.

As part of this motion, Plaintiff adopts, and by reference incorporates herein, his memorandum in support of motion for preliminary injunction as well as his memorandum of points and authorities in support of application for a three-judge court, previously filed with this Court.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
Washington, D.C.
544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
36 N Street, S.E.
Washington, D.C.
544-5000

/s/ Edward E. Schwab
EDWARD SCHWAB
4300 Deane Avenue, N.E.
Washington, D.C.
399-4310

Attorneys for Plaintiff

[*Certificate of Service Omitted in Printing*]

[*Title Omitted in Printing*]

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH HE CONTENDS THERE IS NO GENUINE ISSUE

Plaintiff hereby respectfully submits, in compliance with Rule 9(h) of the Local Civil Rules, the material facts, as to which there is no genuine issue, contained in Plaintiff's Affidavit in Support of Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff's Supplemental Affidavit in Support of Motion for Preliminary Injunction as well as all facts set forth in Plaintiff's Complaint and attached Exhibits, Affidavit of Clara Little Wright in Support of Plaintiff's Motion for Preliminary Injunction and letter from Dr. Emerson Williams, M.D., to Leona Yurdin, which are, by reference, made a part hereof and reflect the material facts as they exist in this case.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
Washington, D.C.
544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
36 N Street, S.E.
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/s/ Edward E. Schwab
EDWARD SCHWAB
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399-4310

Attorneys for Plaintiff

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PLAINTIFF'S OPPOSITION TO DEFENDANT'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiff, through counsel, hereby opposes in good faith the facts presented by Defendant in the Affidavit of Paul Merlin, Chief of Litigation, Social Security Division, Office of the General Counsel, Department of Health, Education and Welfare (previously filed with the Court), specifically found in paragraph (2)(e) thereof.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
Washington, D.C.
544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
36 N Street, S.E.
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/s/ Edward E. Schwab
EDWARD SCHWAB
4300 Deane Avenue, N.E.
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399-4310

Attorneys for Plaintiff

[*Certificate of Service Omitted in Printing*]

AFFIDAVIT IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

I, Clara Little Wright, being duly sworn, depose and state the following as my affidavit in support of my husband Radie P. Wright's motion for a preliminary injunction filed in this action:

1. I am 45 years old and was born on April 25, 1925. I was raised in Wadesboro, North Carolina and completed the 10th grade in public school. I began doing farm work when I was 10 years old.

2. On June 27, 1949, I married Radie P. Wright in Chesterfield, North Carolina. In 1953 I joined my husband who had moved to the District of Columbia in 1952. We have lived together since that time.

3. Since the date of my marriage I have not had a regular job, either full time or part time. I am an out-patient at the Freedman's Hospital Clinic and receive treatments for nervous system disorders and kidney malfunctions. My doctor has advised me not to stand on my feet for long periods and not to do heavy lifting or any strenuous work. Consequently, I have not been able to be employed.

4. My clothing primarily consists of about four nice dresses, worn to attend church services, two or three housework dresses, one skirt and blouse purchased for Easter of this year and costing about $5.00 and $1.00, respectively, one old winter coat, and old second hand raincoat, three old cardigan sweaters, one pair of work shoes, two pairs of better shoes, two old slips, about five pairs of underwear, about two old brassiers, one old hat, two handbags and to better handbags.

5. To the best of my knowledge, information and belief, the facts stated by my husband in his affidavit and supplementary affidavit in support of his motions for a temporary

restraining order and preliminary injunction, both filed herein, are true.

/s/ Clara Little Wright
CLARA LITTLE WRIGHT

SUBSCRIBED AND SWORN TO before me this 15 day of June 1970.

William T. Matthews
Notary Public

My commission expires:

William T. Matthews
Notary Public D.C.

My Commission Expires Sept. 14, 1971

SUPPLEMENT TO AFFIDAVIT OF RADIE P. WRIGHT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, Radie P. Wright, being duly sworn, depose and say the following as a supplement to the affidavit previously submitted in support of my motions for a temporary restraining order and a preliminary injunction:

1. Since May 1966, when I became entitled to Social Security Disability Insurance benefits, I have never understood that if I worked I might lose my disability insurance benefits. From television and radio news annotncements my understanding has been that President Nixon had authorized all recipients of Federal Government benefits to work while they continued to receive their benefits. I worked because my family needed more money to buy the necessaries of life. My employments have caused me great physical discomfort and have worsened my state of health. I stopped working because I became too sick to continue. Had I known that working would endanger my continued receipt of disability insurance benefits, I would not have sought employments.

I promptly complied with a request sent to me by the Social Security Administration asking that I speak with a claims representative about my disabled condition. As I stated in my affidavit filed in suport of my motions for a temporary restraining order and preliminary injunction, I reported to the claims representative that I had not worked since December 1969 because of my very poor physical condition. I also stated where I had worked and described the nature of that work. The claims representative did not inform me that my work would cause me to lose my disability benefits. The claims representative explained that the Social Security Administration was simply investigating my condition. I was not told not to work, but have been unable to seek employment because of my disability.

2. On May 28, 1963, my youngest son Clarence Edward Wright became a ward of the District of Columbia Department of Public Welfare. Under order of the Juvenile Court of the District of Columbia, he was sent to the Mapel Glen facility in the District of Columbia Children's Center in Laurel, Maryland. He remained there two years and on

June 23, 1965, he was recommitted by the Juvenile Court to the Children's Center for an indefinite term.

At the Children's Center it was found that my son is mentally retarded. He was therefore transferred to the Children's Center facility for the treatment of mentally retarded children. From September 10, 1967 to January 23, 1970, he was treated at Saint Elizabeth's Hospital. His medical record indicates, among other thing, that he has brain damage, evidence of schizophrenia and is a homosexual.

On May 9, 1970, Clarence was returned home and has been living with me and my wife Clara at our home. However, Clarence takes medication daily and must make visits to Saint Elizabeth's. We have been informed that he can remain with us as a visitor for one month. Thereafter, if the Department of Public Welfare determines his home and community adjustment has been good, he may be permitted to remain with us indefinitely.

3. Since May 1, 1970, when my Social Security Disability benefits were terminated, my wife, my family and I have suffered from not having any income with which to buy the necessities of life. Our daily diet for the month of May primarily consisted of beans, white potatoes, cabbage, some other greens, and some cold cereal. We quickly exhausted our small supply of milk, eggs, butter, meat, cheese and other high protein foods. When we had income from my Social Security Disability Insurance, we eat chicken, beef stew, pork, eggs, milk and other green vegetables. Because of my damaged liver and other weaknesses, my doctors have urged me to eat milk, eggs, meat and high protein foods everyday. Since we have no money, I have been unable to follow my doctors' recommendations and consequently have worsened my physical condition. The poor diet we have been compelled to maintain has also caused a worsening of my wife Clara's physical and mental conditions.

4. My son Radie Jr. works part time in a car-wash business in Bethesda, Maryland. However, he is unable to contribute to my support or to the support of my wife or his brother Clarence, nor does he contribute toward the payment of rent and other household expenses.

5. My clothing currently consists of one pair of old shoes, one pair of old slippers, three old short-sleeved white

shirts, two pairs of old undershorts, three pairs of old undershirts, three pairs of old slacks, one old suit jacket, one old second hand raincoat, one old heavy coat, two pairs of old socks with holes, one old hat, no rubbers and no other significant item of clothing.

6. My son Radie Jr. also has a very meager supply of clothing. He has no suit, two pairs of old slacks, two or three shirts, about four pairs of old underwear, and a few tee shirts. I have bought no clothing in the past month.

7. My son Clarence's wardrobe consists of the few articles of clothing given him while he was living at the Children's Center. He has two pairs of old pants, two shirts, one pair of old shoes, one pair of old sneakers and about two old pairs of underwear.

8. Our household furniture for our two bedroom house primarily consists of two old double beds, with two old mattresses, one small clothes bureau, three clothing closets, two old sofas, about five chairs, one old second-hand television, two inexpensive radios, two old small throw rugs and a second-hand kitchen table with second-hand chairs. We have two waste paper baskets, and very few dishes, pots and pans. Our linen supply consists of about six towels, four sheets, two pillows and four pillow cases. We have no decent rugs, no lamps and no work or coffee tables.

/s/ Radie P. Wright
RADIE P. WRIGHT

SUBSCRIBED AND SWORN TO before me this 11th day of June 1970.

/s/ Marlin L. Casto
Notary Public

My commission expires:

Marlin L. Casto
Notary Public DC

My commission expires July 14, 1973

[Certificate of Service Omitted in Printing]

[*Title Omitted in Printing*]

SUPPLEMENT TO AFFIDAVITS OF RADIE P. WRIGHT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, Radie P. Wright, being duly sworn, depose and say the following as a supplement to the affidavits previously submitted in support of my motions for a temporary restraining order and a preliminary injunction:

1. Since the fall of 1965, when I suffered a hemorrhage and was admitted to Freedman's Hospital in the District of Columbia, I have been consistently advised by my consulting physicians that I should not work because of a severe permanent disability.

2. Only recently I requested an opinion in that respect, through my counsel, from Emerson A. Williams, M.D., my present consulting physician, and he advised by letter to Miss Leona Yurdin dated June 23, 1970 (attached hereto) that I am still unemployable due to my present physical condition.

/s/ Radie P. Wright
RADIE P. WRIGHT

SUBSCRIBED AND SWORN TO before me this 30th day of July 1970.

/s/ Martin L. Casto
Notary Public

My commission expires: July 14, 1973

[*Certificate of Service Omitted in Printing*]

EMERSON A. WILLIAMS, M. D.
705 KENYON STREET, N. W.
WASHINGTON, D. C. 20010
TELEPHONE 529-3191

23 June 70.

Miss Wanda Yarden
Neighborhood Legal Service
36 N. Street SE
Washington, D.C.

Dear Miss Yarden:

Concerning Mr. Radie Wright whom I have seen personally in the Martin Luther Clinic at Freedmen's & whose full medical record I have reviewed, it is my personal opinion he is unemployable & ineligible for welfare assistance. He has multiple medical problems including cardiac disease, hiatus hernia, cirrhosis of the liver, depressive reaction, degenerative bone disease.

Sincerely yours,
Emerson A. Williams

MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION AND TO JOIN AS PARTY PLAINTIFF

Applicant for intervention, John Dillard Atkins, Jr., by his counsel, respectfully moves this Court for leave to file a complaint in intervention and to join as party plaintiff in the above-captioned action, and in support thereof states as follows:

1. Applicant's complaint in intervention and affidavit in support thereof, attached hereto, set forth the facts upon which his claim is based.

2. Applicant's claim and prayer for relief are parallel to those set forth in the cause presented to the Court by the Plaintiff Radie Wright.

3. Applicant is a member of a class in which all members have been found entitled to receive Old Age, Survivors, and Disability Insurance benefits under Title II of the Social Security Act, 42 U.S.C. Sections 401-429, and who face preemptory, *ex parte* suspension or termination of their payments upon an administrative determination of ineligibility, prior to being afforded an opportunity for an evidentiary hearing, pursuant to 42 U.S.C. Sections 405(b), 421(a), 421(d) and 425, in violation of rights guaranteed under the Due Process Clause of the Fifth Amendment to the United States Constitution.

4. It is in the applicant's interest, and that of the Court, to have the issue of the Constitutionality of Sections 205(b), 221(a), 221(d) and 225 of the Social Security Act (42 U.S.C. Sections 405(b), 421(a), 421(d) and 425), insofar as they authorize or require the defendant Secretary to terminate Social Security Disability Insurance benefit payments without adequate notice and prior opportunity for a fair hearing, decided so as to avoid further confusion and repetitious litigation.

5. Applicant submits that no prejudice to the parties

would result through this Court's granting leave to file a complaint in intervention at this time.

Respectfully submitted,

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
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544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
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/s/ Edward E. Schwab
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4300 Deane Avenue, N.E.
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Attorneys for Applicant

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[*Title Omitted in Printing*]

COMPLAINT IN INTERVENTION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

(Request for Three-Judge Court)

I

This is a complaint in intervention seeking declaratory injunctive relief to protect applicant-for-intervention, John Dillard Atkins, Jr.'s rights under Title II of the Social Security Act, 42 U.S.C. Sections 401 *et seq.* and regulations promulgated thereunder, and the due process clause of the Fifth Amendment to the United States Constitution. This action arises under the Constitution and laws of the United States, including the Fifth Amendment to the Constitution and 42 U.S.C. Sections 402(d) and 423.

II

Jurisdiction of this court is invoked pursuant to 11 D.C. Code, Section 521 (1967 ed.) and 28 U.S.C. Sections 1331, 1343(4), 1361, 2201, 2282, and 2284. The amount in controversy exceeds the sum of $10,000.00 exclusive of interest and costs.

III

This an appropriate case for the convening of a three-judge court, pursuant to 28 U.S.C. Sections 2282 and 2284, in that the applicant-for-intervention seeks an injunction against the enforcement, operation and execution of Acts of Congress, 42 U.S.C. Sections 425, 405(b), 421(a) and 421(d) (a copy of which is attached hereto as Exhibit A), insofar as these statutes authorize or require suspension on termination of financial benefits prior to granting adequate notice and opportunity to be heard, on grounds of their repugnance to the due process clause of the Fifth Amendment to the Constitution of the United States.

IV

This action seeks an injunction and declaratory judgment declaring unconstitutional and restraining the enforcement

of the aforesaid Acts of Congress, on their face and as applied and interpreted by defendant, on the grounds that said statutes, and actions taken pursuant thereto, deny to the applicant-for-intervention due process of law guaranteed by the Fifth Amendment to the United States Constitution, in that said statutes deny to the applicant-for-intervention reasonable and adequate notice of the grounds of suspension or termination of his Disability Insurance benefits, and deny to the applicant-for-intervention an opportunity for a fair and proper evidentiary hearing prior to the termination of his Disability Insurance benefits.

V

Applicant, John Dillard Atkins, Jr., is an adult citizen of the United States and has been a domiciliary resident of the State of Virginia since 1945. Applicant, John Dillard Atkins, Jr., has been married to Martha Ruth Atkins for 28 years and they have two adult children presently married and living elsewhere. Applicant's domiciliary residence is located at 2546 Military Road, Arlington, Virginia, where his wife currently resides. Applicant resides at present in the Veterans Administration lodge as a mental patient of the Veterans Administration Hospital in Salem, Virginia, where he has been hospitalized continuously from January 18, 1969 and as a resident of the lodge since July 18, 1969.

VI

Applicant, John Dillard Atkins, Jr., has a history of mental disorder and was admitted to the Veterans Administration Hospital in Perry Point, Md. in December 1966 under a psychiatric diagnosis of extreme depression and has remained under psychiatric care continuously until the present time. He applied for social security disability benefits in December 1966 and was awarded disability benefits in July 1967, after a six month initial waiting period, on the bais of a determination, pursuant to 42 U.S.C. Sections 423(d)(1)(A), of his "inability to engage in any substantial gainful activity by reason of (a) medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

VII

Applicant is a member of a class in which all members have been found entitled to receive Old Age, Survivors, and Disability Insurance benefits under Title II of the Social Security Act, 42 U.S.C. Sections 401-429. All of the members of this class face peremptory, *ex parte* termination of their payments upon an administrative determination of ineligibility prior to being afforded an opportunity for an evidentiary hearing. The authority to terminate payment and then grant an opportunity for a hearing is granted by 42 U.S.C. Sections 405(b), 421(a), and 421(d), and is in violation of rights guaranteed under the Due Process Clause of the Fifth Amendment. A substantial portion of this class, including the named applicant, face peremptory, *ex parte* suspension of benefits if the defendant believes they "may have ceased to be under a disability", pending his determination of whether "disability has ceased or until the Secretary believes that such disability had not ceased" as authorized by 42 U.S.C. Section 425. Applicant brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all persons constituting the above class who are similarly situated. The persons in the class are so numerous that joinder of all members is impractical; there are questions of law or fact common to the class; the claims of the representative parties are typical of the class; and the representative parties will fairly and adequately protect the interests of the class. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class; adjudications with respect to individual members of the class would, as a practical matter, be dispositive of other members not parties to the adjudications; the questions of law and fact common to the members of the class predominate over any questions affecting only individual members; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VIII

Defendant Robert H. Finch is the Secretary of Health, Education and Welfare and, as such, is charged with the

administration of Title II of the Social Security Act, 42 U.S.C. Sections 401 *et seq.;* and in particular with the determination of entitlement to benefits on the basis of disability pursuant to 42 U.S.C. Sections 402(d) and 423.

IX

Applicant, John Dillard Atkins, Jr., began part time employment at 14 years of age for the Atlantic and Pacific Tea Company. In 1934, at age 18, he began full time employment with the Civilian Conservation Corps and worked in that capacity until August 1936. At that time he enrolled at North Carolina State College at Raleigh, North Carolina and graduated with a Bachelors Degree in June 1940. Applicant entered the Marine Corps in July 1940 as a commissioned officer (second lieutenant). He remained on active status with the Marine Corps until April 1945. He did retire in 1943 because of a physical disability, but remained on active duty until 1945. The disability was diagnosed, at the Norfolk Naval Hospital in Portsmouth, Virginia, as being psychiatric in nature and was apparently the same or a related disability to that which he is now suffering. In July 1945, applicant began working for the Virginia Forrest Service and continued that employment until April 1947. In September 1947, applicant commenced teaching (mathematics) at a high school in Aldie, Virginia. He completed the school year in June 1948 and at that time commenced a Masters degree program at George Washington University. The George Washington University awarded a Master of Arts degree in education in 1949. In September 1949, applicant, John Dillard Atkins, Jr., began working in the Arlington County School system as a teacher and continued employment in that capacity until December 1966. In the spring of 1966, applicant voluntarily entered Bethesda Naval Hospital in the Neuro-psychiatric ward for approximately three months. In the fall of 1966, he began teaching again in Arlington County and continued until December 1966 whereupon he completed his last employment in any capacity whatsoever.

X

Applicant, John Dillard Atkins, Jr. left his teaching position with the Arlington County School system in Dec-

ember 1966 in order to enter the Veterans Administration (mental) Hospital at Perry Point, Maryland because of severe psychiatric problems. He remained at the hospital in Perry Point until January 7, 1969. On January 8, 1969, applicant was committed by the Arlington County Court, Judge Dodge, to the Western State Hospital in Staunton, Virginia and later transferred, on January 18, 1969, to the Veterans Administration Hospital in Salem, Virginia, where he has been continuously and is still a patient at this time. On April 10, 1967, applicant's physician at the Veterans Administration Hospital in Perry Point, Maryland, diagnosed him as essentially totally and permanently disabled. This diagnosis was confirmed by letter to the Virginia Supplemental Retirement System dated April 10, 1967. The prognosis was, in part, that:

> "(It) is highly unlikely that he can ever reintegrate to a level that would qualify him to return to active teaching. It is even inconsiderably at this time that the patient will ever be able to make a responsible social adjustment living outside of the psychiatric hospital."

See Exhibit A attached hereto. This prognosis was made on the basis of continuous psychiatric treatment at the Perry Point Veterans Administration Hospital for approximately one year and a half (December 1966 until April 1967). Due to applicant's mental condition from December 1966 until the present, all of which time he has been institutionalized as a mental patient, it has been impossible for him to continue employment as a teacher or in any other capacity. In December 1966 applicant applied for social security disability benefits and was awarded disability benefits in July 1967, after a six month initial waiting period.

XI

Applicant, John Dillard Atkins, Jr., continued to receive social security disability benefits from July 1967 until February 3, 1970 when he received a letter of that date from the Social Security Administration advising him, in pertinent part, that:

"The medical evidence in your case shows that your

condition has improved to the extent that you became able to do substantial gainful work in January 1970. Accordingly, the last disability benefit to which you are entitled is for the month of March 1970." Exhibit B attached hereto.

XII

On February 4, 1970, (one day after receipt of the letter of termination), applicant, John Dillard Atkins, Jr., directed a letter to the Social Security Administration advising them that, contrary to their assertion that he was able to do substantial gainful work in January 1970, his last date of gainful employment was December 13, 1966 and that he is now and has continuously been a patient at the Veterans Hospital in Salem, Virginia since January 16, 1969. He further advised that: "I have never been discharged from that hospital." See Exhibit C attached hereto. On the day after recipt of the letter terminating applicant's social security benefits, February 4, 1970, applicant's wife contacted the office of Congressman Joel T. Broyhill, requesting some form of help. In response to her request, Congressman Broyhill sent a telegram on February 5, 1970 to the Social Security Administration advising them that the applicant was totally disabled and requesting that his office be informed concerning the applicant's status. Exhibit D attached hereto. Furthermore, shortly after receiving the letter of termination dated February 4, 1970, applicant's wife telephoned the Social Security Administration in three different instances. In each instance she talked to a different person. On the last occasion, she explained to Commissioner Ball's Assistant that if she and her husband (applicant herein) did not know if there was any chance of reinstatement or even reconsideration by April 1, 1970, it would be necessary to sell their home. Thereafter, applicant and his wife directed approximately ten letters to the Social Security Administration requesting information in regard to applicant's status and whether he would be reinstated or even receive a reconsideration by April 1, 1970, without even receiving any response or reply by the Administration other than a letter to Congressman Broyhill's office advising that applicant's termination was under investigation, but failing to comment on whether

or not a decision would be reached by the crucial terminating date of April 1, 1970.

XIII

On April 23, 1970, the Social Security Administration advised Congressmen Broyhill by telegram that they had determined that applicant, John Dillard Atkins, Jr., was still disabled within the meaning of the law. Exhibit E attached hereto.

XIV

Applicant's, John Dillard Atkins, Jr., condition and situation from January 1970, when the letter of termination dated February 3, 1970 stated he was medically able to do substantial employment, until reinstatement on April 21, 1970, remained virtually the same. During that period, he remained and is still a patient at the Veterans Administration Hospital, Salem, Virginia, residing in the Veterans Administration lodge as a mental patient.

XV

Nevertheless, applicant was forced to undergo the severe mental strain of fearing the imminent termination of his social security benefits by March 1970, without a hearing, and without ever being assured by the Social Security Administration that his case would even be reconsidered or reviewed by that time.

XVI

On April 30, 1970, applicant received a letter from the Social Security Administration, dated April 29, 1970 (six days after the Social Security Administration saw fit to notify Congressman Broyhill by telegram), advising that:

> "We recently reviewed the evidence in your disability claim and find that you are still disabled.
>
> The evidence we have indicates your condition may improve in the future. *Thus, we scheduled your claim for another review about September, 1971.*" (emphasis added)

XVII

It appears that, on the basis of past experience, applicant can look forward, at that time, to the prospect of another possible termination (or suspension ending investigation) of benefits, without a hearing and without even any assurance by law that his case will even be reviewed or reconsidered before his benefits are terminated.

XVIII

The consequences of the Social Security Administration's determination to terminate applicant's disability benefits by March 1970 have been catastrophic. Applicant's total monthly income consists of statutory benefits received from social security, V.A. compensation and Virginia State retirement. The prospective loss of his social security benefits would have seriously impaired his ability to maintain his current obligations. Consequently, his wife took a third trust on their house on March 17, 1970, and later sold their home on April 5, 1970. Exhibit G attached hereto.

XIX

Applicant, John Dillard Atkins, Jr., due to his present state of health, is presently unable to maintain gainful employment and provide support for himself and his family. Moreover, considering the lengthly period in which applicant has recently been institutionalized because of mental illness (the last 3½ years), it appears that there is little chance of applicant being able to assume gainful employment and provide support for himself and his wife in the foreseable future, certainly not by September 1971. Accordingly, because of the prospective loss of social security income in September 1971, without a hearing, applicant and his wife suffer severe mental anguish and immediate, continuing and irreparable injury to their health.

XX

Title II of the Social Security Act, 42 U.S.C. Section 401 *et seq.*, creates a program of Disability Insurance under which individuals who have accumulated certain quarters of coverage and suffer a totally disabling impairment of enduring character become thereby entitled to earning-replacement benefit payments for themselves and their de-

pendents. Persons who meet the statutory criteria (42 U.S.C. Sections 402(d) and 423), as interpreted in the Department of Health, Education and Welfare regulations, receive disability insurance payments as a matter of statutory entitlement.

XXI

Defendant's preemptory, *ex parte* action suspending or terminating applicant's social security disability insurance benefits violates the Due Process Clause of the Fifth Amendment to the United States Constitution in that it effectively suspended or terminated and withheld benefits essential to life itself without affording applicant, John Dillard Atkins, Jr., reasonable and adequate notice as well as an opportunity for a prior fair hearing.

XXII

Sections 205(b), 221(a), 221(d) and 225 of the Social Security Act, 42 U.S.C. Sections 405(b), 421(a), 421(d) and 425 are invalid and repugnant to the Due Process Clause of the Fifth Amendment to the United States Constitution insofar as they authorize or require the defendant Secretary to take preemptory, *ex parte* action suspending or terminating benefits without affording reasonable and adequate notice and an opportunity for a prior fair hearing.

WHEREFORE, applicant-for-intervention respectfully prays that this Court:

1. Assume jurisdiction of this case;

2. Convene a three-judge Court to hear this cause;

3. Enter a Preliminary and Permanent Injunction (A) restraining the operation and enforcement of 42 U.S.C. Sections 405(b), 421(a), 421(d) and 425 insofar as they authorize or require the defendant Secretary to put into effect the suspension or termination of social security disability insurance benefits to applicant, and (B) requiring the defendant Secretary to continue benefit payments to applicant until notice and opportunity for a hearing meeting Due Process standards are afforded;

4. Declare that 42 U.S.C. Sections 405(b), 421(a), 421(d) and 425 are invalid as repugnant to the Due Process required by the United States Constitution insofar as they authorize or require termination of social security disability

insurance benefits payments without adequate notice and prior opportunity for a fair hearing;

5. Certify applicant and those who are similarly situated as a class, pursuant to Rule 23 of the Federal Rules of Civil Procedure, in respect to all rights and liabilities involved in this action;

6. Declare the other rights and relations of the parties hereto;

7. Award Costs to applicant; and

8. Enter such other further relief as the Court may deem just and appropriate.

/s/ John Dillard Atkins, Jr.
JOHN DILLARD ATKINS, JR.

/s/ Leona Yurdin
LEONA YURDIN
36 N Street, S.E.
Washington, D.C. 20003
544-5000

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
36 N Street, S.E.
Washington, D.C. 20003
544-5000

/s/ Edward E. Schwab
EDWARD SCHWAB
4300 Dean Avenue, N.E.
Washington, D.C.
399-4310

Attorneys for applicant for Intervention

DISTRICT OF COLUMBIA, ss:

I, John Dillard Atkins, Jr., being first duly sworn on oath, depose and say that I have read the foregoing complaint in intervention by me subscribed and that the facts stated therein are true to the best of my knowledge, information and belief.

/s/ John D. Atkins, Jr.
JOHN D. ATKINS, JR.

SUBSCRIBED AND SWORN TO before me this 16th day of June 1970.

/s/ Dorothy R. Cox
Notary Public

My commission expires: March 25, 1973.

[*Certificate of Service Omitted in Printing*]

SES-17
1 of 2

VIRGINIA SUPPLEMENTAL RETIREMENT SYSTEM
300 FINANCE BUILDING,
Richmond, Virginia

REPORT OF PHYSICIAN

Dear Doctor , you are authorized to fill out this form and forward same to the Virginia Supplemental Retirement System, P. O. Box 3X, Richmond, Virginia.

/s/ John D. Atkins, Jr.
Signature of Applicant

4-10-67
Date

Address

ABOVE TO BE EXECUTED AND SIGNED BY APPLICANT FOR DISABILITY RETIREMENT

TO THE PHYSICIAN RENDERING THE FOLLOWING REPORT:

It is important that you make a full report of the patient's illness and the details of your findings, so that the Medical Board of the Virginia Supplemental Retirement System whose duty it is to review the report and render an opinion will have a clear-cut picture of the patient's condition. Simply stating "arthritis", "heart disease", "nervous trouble", etc., without going into the details of the patient's complaints and objective findings, the degree of disability and a reasonably comprehensive statement as to the prognosis and treatment, does not give sufficient information on which to adequately evaluate the report. Lack of sufficient medical evidence will result in the Medical Board not being able to promptly and properly determine the case of the above applicant for disability retirement.

Your complete cooperation will avoid delay and be appreciated.

I hereby certify Mr. John D. Atkins has been under my professional care since 12-14-66.

1. DIAGNOSIS: Depressive reaction.

2. TREAMENT: This patient has been under continuous psychiatric treatment here at Perry

Point Veterans Administration and has received intensive therapy and also has been treated with various tranquilizers and mood affecting drugs. The patient remains an extremely inhibited and anxious man whose character structures no longer is successful in warding off the continuing decompensation and essentially totally disability.

In view of the extensive efforts, without success, that this man has experienced are very real regression and also he may have made a "satisfactory adjustment."

3. PROGNOSIS: He was a teacher some years ago, but is highly unlikely that he can ever reintegrate to a level that would qualify him to return to active teaching. It is even inconsiderably at this time that the patient will ever be able to make a responsible social adjustment living outside of the psychiatric hospital.

Kindly mail report to Virginia Supplemental Retirement System, P. O. Box 3X, Richmond, Virginia.

/s/ W. M. Harris, M.D.
W. M. HARRIS, M.D.
Signature of Physician

William M. Harris, M.D.
Type or Print Name of Physician

VAH, Perry Point, Maryland 21902
Address

4-10-67
Date

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21241

Refer to: 246-12-5511 HA
When Writing To:
Social Security Office
Alexandria VA
February 3, 1970

John T Adkins Jr
2546 Military Rd N
Arlington VA 22205

The law provides that an individual's disability period shall end if his condition improves so that he becomes able to do substantial gainful work. The law also provides that an individual will receive his benefit payments for the month his disability ends and the following two months. The medical evidence in your case shows that your condition has improved to the extent that you became able to do substantial gainful work in January 1970. Accordingly, the last disability benefit to which you are entitled is for the month of March 1970.

The decision on your claim was made by the Social Security Administration on the basis of a disability determination by an agency of the State in which you live. Physicians and other trained disability evaluation personnel in the State agency participated in making this determination.

If your condition again prevents you from doing substantial gainful work before age 65, you should get in touch with your social security office about filing a new application for disability benefits.

If you believe that this determination is not correct, you may request that your case be re-examined. If you want this reconsideration, you must request it not later than 6 months from the date of this letter. You may make any such request through your social security office. If additional evidence is available, you should submit it with your request. Please read the enclosed leaflet for a full explana-

tion of your right to question the determination made on your claim.

If you have any questions about your claim, you should get in touch with your social security office. If you call in person, please take this notice with you.

Sincerely yours,

/s/ F. H. Sheel
F. H. SHEEL
Director, Division of Evaluation and Authorization
Bureau of Disability Insurance

Enclosure:
SSI-58

542 Walnut Ave., S. W.
Roanoke, Va. 24016
February 4, 1970

U. S. Department of Health, Education
and Welfare
Social Security Administration
Alexandria, Va.

Gentlemen: Attention: Mr. Colins

My name is John D. Atkins, Jr., and my Social Security number is 246-12-5511.

Please refer to your letter of February 3, 1970, addressed to John T. Adkins, Jr. at 2546 Military Road, Arlington, Va. Note that my middle initial is "D"; not "T". Note also that I live at 542 Walnut Ave., S. W., Roanoke, Va.; not at 2546 Military Road, Arlington, Va.

Your letter says that I am gainfully employed and have been for some time. My last date of gainful employment was December 13, 1966. At that time I left the employ of the Arlington County, Virginia, School Board. I was on sick leave until about the second week of February, 1966, but I did not earn any salary after that date.

I am still a patient at the Veterans Hospital, Salem, Va., and have been a patient there since January 16, 1969. I have never been discharged from that hospital.

Since there is an error in my name as shown in your letter of February 3, 1970, someone may be posting earnings to my account in error. Please investigate.

If I have the right to appeal your decision, this is my notice of an appeal. I am asking officials at the hospital where I am a patient to send you substantiating materials. Their statements will follow.

It is requested that you reply to this letter stating your action. According to your 1969 edition of "Rights and Responsibilities of Those Who Receive Social Security Disability Benefits", you normally give people three months at substantial gainful work before you take away their benefits. I have had no substantial gainful work since De-

cember 13, 1966, yet you tell me on February 3, 1970, that you will stop payments to me in March, 1970. I request that you give me the normal time of three months in which to show that someone has made a mistake.

Sincerely,
John D. Atkins, Jr.

telegram

NO. WDS.	CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	OWLN NIGHT TELEGRAM
	TLG		2-5-70	KF	UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM

Send the following message, subject to the terms on back hereof, which are hereby agreed to

Social Security Administration
Baltimore, Md.

Please do not stop payment to John D. Atkins, 2546 Military Rd N, Arlington, Va. 22207, SSN 246-12-5511.

your recent notice is in error. He does not have employment and is still totally disabled. Medical certificate being sent. It appears earnings have been posted to his account in error. Please advise me.

Joel T. Broyhill, M.C.

WU 1211 (R 5-69)

P
[83120 EVDAG

RECEIVED, APR 23, 11 07 AM, 70, GSA-REGION 3, TCS, COMMUNICATIONS

PAAULJAZ RUEVDKSD318 1131412-UUUU-RUEVDAG.

HWSS

FM ROBERT M BALL COMMISSIONER OF SOCIAL SECURITY
BALTIMORE MARYLAND

TO HONORABLE JOEL T. BROYHILL HOUSE OF REPRESENTATIVES WASHINGTON D C

BT

DO NOT PHONE

RE MR. JOHN D ATKINS, JR. 2546 MILITARY ROAD ARLINGTON VA 22207

CLM NUMBER 246 12 5511

IT HAS BEEN DETERMINED MR. ATKINS IS STILL DISABLED, WITHIN THE MEANING OF THE LAW. BENEFITS HAVE BEEN REINSTATED EFF 4-1-70. CK FOR $173.90 REPRESENTING HIS APRIL BENEFIT WILL BE SENT EARLY IN MAY.

BT

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21241

Refer to: 246-12-5511 HA
When Writing To:
Social Security Office
April 29, 1970

John D. Atkins Jr.
2546 Military Rd.
Arlington, VA 22207

We recently reviewed the evidence in your disability claim and find that you are still disabled. Therefore, your benefit payments will continue.

Your next social security check will be for $173.90. This represents payment through April 1970. You will receive this check shortly. After that, your check will be for $173.90 each month.

The evidence we have indicates your condition may improve in the future. Thus, we scheduled your claim for another review about September 1971. We will be in touch with you at that time, or earlier if you return to work. Please notify us promptly if you return to any type of work.

If you have questions about this notice or other social security matters, you should get in touch with your social security office. If you call in person, please take this notice with you.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL
Assistant Director
Bureau of Disability Insurance

REALTORS SINCE 1908 TELEPHONE 536-9000

Date 5 April, 19 70

RECEIVED FROM John W. and Jean K. McDonald a deposit of
One Thousand Dollars ($ 1,000.00 Check ~~Note~~) to be applied as part payment of the purchase of Lot 614-C
the plan of 5th Add. to Lee Heights, Arlington County with improvements thereon known as 2546 North Military
Road, Arlington, Virginia, 22207, upon the following terms:

Total price of property Forty-Three Thousand Dollars ($ 43,000.00).

To be paid as follows: approx. Eight Thousand Dollars ($ 8,000.00),
~~h~~ at the date of conveyance, of which this deposit shall be a part.

The purchaser is to (~~give~~) conventional (place), a first deed of trust secured on the premises of approx. Thirty-Two Thousand
~~ollars~~ ($ 32,000.00), bearing interest at the rate of 8¼ % per annum, payable approx. $257.60 per month for
~~incipal~~ and interest for 25 years, plus taxes and insurance.

To secure the unpaid balance of the purchase price, the purchaser is to (give), (~~assume~~), a second deed of trust on the premises of approximately
Three Thousand Dollars ($ 3,000.00), bearing interest at the rate of Eight ~~Six~~ percent
~~r~~) ~~per~~ per annum, payable in monthly installments of principal and interest in the sum of Thirty-Six Dollars and Forty Cents
~~ollars~~ ($ 36.40), with prepayment privileges. ~~Unpaid balance due and payable five years from date of origin~~ Said trust will be fully amortized in ten (10) years.
~~ust~~ may be named by the parties secured thereby. Trustees in all deeds of

The property is sold free of encumbrance except as aforesaid; If water and/or sewer lines or other improvements have been installed and/or con-
~~cted~~ prior to the above date, charges for the installation or connection shall be paid by the seller; title is to be good of record subject, however, to
~~venants~~, conditions and restrictions of record, if any; otherwise, said deposit is to be returned and the sale declared off at the option of the purchaser,
~~less~~ there are title defects of such character that they may readily be remedied, but seller and agent are hereby released from all liability for damages
~~reason~~ of any defect in the title. In case steps are necessary to perfect the title, such action must be taken by the seller promptly at his own expense,
~~ereupon~~ the time herein specified for settlement by the purchaser will be extended for the period necessary for such action.

Examination of title, conveyancing, notary fees and all recording charges, including those for purchase money trust, if any, are to be at the cost
the purchaser; in the event the title should be found defective and irremediable, the seller hereby agrees to pay the cost of the examination of the
~~le~~ and also to pay the agent herein his commission just as though the sale had actually been consummated. All taxes, insurance, rents, and interest
~~e~~ to be prorated as of the date of settlement. If contract requires refinancing, seller agrees to pay necessary loan placement fee in excess of 1% paid
~~purchaser~~, if required by lender, however Seller will not pay in excess of 2% loan placement fee.

~~a~~ ~~within~~ 7/27/70 ~~days from the date of acceptance hereof by the owner~~, or upon completion of financing arrangements or as soon thereafter
a report on the title can be secured, the seller and purchaser agree to make full settlement in accordance with the terms hereof. If purchaser fails to
~~so~~, the deposit herein may be forfeited at the option of seller, in which event purchaser shall be relieved from further liability hereunder, or the
~~ller~~, at his option, may avail himself of any legal or equitable rights arising under this contract. In the event of forfeiture of deposit, agent shall be
~~titled~~ to one-half thereof as compensation for his services.

Seller agrees to give possession at time of settlement, and in the event he shall fail to do so he shall become and be thereafter a tenant by sufferance
the purchaser and hereby waives all notice to quit. The risk of loss or damage to said property by fire or other casualty until the deed of conveyance
recorded is assumed by the seller. Seller must locate and contract for a property to move to not later than
have settlement date by June 15, 1970.

~~The~~ seller agrees to pay to SHANNON & LUCIUS, the said agent, a sales commission of 6% of the gross purchase price. Entire deposit to be held
~~SHANNON~~ & LUCIUS, until settlement is made.

Seller guarantees ~~plumbing~~ air conditioning, electrical and heating systems, water heater, and all appliances shall be in good working condition as of settlement date. Seller
~~grees~~ to furnish purchaser a certificate of termite free condition at date of settlement.

Settlement is to be made at the office of agent or the attorney searching the title, and the deposit of the purchase money, the deed of conveyance
~~e~~ execution and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of per-
~~rmance~~ of the terms hereof. at the office of Mr. John E. Kilcarr, Arlington, Virginia.

Seller agrees to execute the usual general warranty deed, to be prepared at his expense, and to pay for the Virginia Revenue Stamps thereon.
~~If new VA or FHA financing is to be placed and necessary appraisals have not been ordered, purchaser agrees to pay for the required appraisal~~
~~f~~ the property.

Seller, at his expense, agrees to meet any and all FHA or VA requirements and/or conditions to qualify the property for the above loan.

If a new FHA insured first trust is to be placed, purchaser and seller each agree to the following:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase
~~f~~ the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the pur-
~~aser~~ a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property for mortgage purposes of not
~~ss~~ than $ _____, which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement
~~made~~ available to the seller.

Purchaser and seller agree to promptly, diligently, and in good faith, commit those acts necessary to obtain the financing provided for herein.
~~If~~ any new financing is required, this contract is contingent upon its procurement.

If a new VA guaranteed first trust is to be placed and the veteran-purchaser is unable to obtain the aforementioned VA guaranteed loan, this
~~contract~~ shall be declared null and void and his deposit shall be refunded.

The above conditions apply equally when financing, other than VA financing, is required. When a new first trust is to be placed and the purchaser
~~unable~~ to obtain the new first trust after having made all reasonable efforts to do so, this contract shall be declared null and void and the deposit

dollars ($ 32,000.00), bearing interest at the rate of 8½ % per annum, payable approx. $257.60 per month for principal and interest for 25 years, plus taxes and insurance.

To secure the unpaid balance of the purchase price, the purchaser is to (give), (assume), a second deed of trust on the premises of approximately Three Thousand---------- Dollars ($ 3,000.00), bearing interest at the rate of Eight (8) per cent per annum, payable in monthly installments of principal and interest in the sum of Thirty-Six Dollars and Forty Cents dollars ($ 36.40), with prepayment privileges. ~~Unpaid balance due and payable five years from date of origin~~ Said trust will be fully amortized in ten (10) years. Trustees in all deeds of trust may be named by the parties secured thereby.

The property is sold free of encumbrance except as aforesaid; If water and/or sewer lines or other improvements have been installed and/or connected prior to the above date, charges for the installation or connection shall be paid by the seller; title is to be good of record subject, however, to covenants, conditions and restrictions of record, if any; otherwise said deposit is to be returned and the sale declared off at the option of the purchaser, unless there are title defects of such character that they may readily be remedied, but seller and agent are hereby released from all liability for damages by reason of any defect in the title. In case steps are necessary to perfect the title, such action must be taken by the seller promptly at his own expense, and thereupon the time herein specified for settlement by the purchaser will be extended for the period necessary for such action.

Examination of title, conveyancing, notary fees and all recording charges, including those for purchase money trust, if any, are to be at the cost of the purchaser; in the event the title should be found defective and irremediable, the seller hereby agrees to pay the cost of the examination of the title and also to pay the agent herein his commission just as though the sale had actually been consummated. All taxes, insurance, rents, and interest are to be prorated as of the date of settlement. If contract requires refinancing, seller agrees to pay necessary loan placement fee in excess of 1% paid by the purchaser, if required by lender, however Seller will not pay in excess of 2% loan placement fee.

It is agreed that ~~7/27/70 days from the date of acceptance hereof by the owner~~, or upon completion of financing arrangements or as soon thereafter as a report on the title can be secured, the seller and purchaser agree to make full settlement in accordance with the terms hereof. If purchaser fails to do so, the deposit herein may be forfeited at the option of seller, in which event purchaser shall be relieved from further liability hereunder, or the seller, at his option, may avail himself of any legal or equitable rights arising under this contract. In the event of forfeiture of deposit, agent shall be entitled to one-half thereof as compensation for his services.

Seller agrees to give possession at time of settlement, and in the event he shall fail to do so he shall become and be thereafter a tenant by sufferance of the purchaser and hereby waives all notice to quit. The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is recorded is assumed by the seller. Seller must locate and contract for a property to move to not later than have settlement date by June 15, 1970.

The seller agrees to pay to SHANNON & LUCHS, the said agent, a sales commission of 6% of the gross purchase price. Entire deposit to be held by SHANNON & LUCHS, until settlement is made.

Seller guarantees plumbing and heating systems, water heater, and all appliances shall be in good working condition as of settlement date. Seller agrees to furnish purchaser a certificate of termite free condition at date of settlement. air conditioning electrical

Settlement is to be made at the office of agent or the attorney searching the title, and the deposit of the purchase money, the deed of conveyance for execution and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of performance of the terms hereof. Cr. John E. Kilcarr, Arlington, Virginia.

Seller agrees to execute the usual general warranty deed, to be prepared at his expense, and to pay for the Virginia Revenue/Stamps thereon.

~~If new VA or FHA financing is to be placed and necessary appraisals have not been ordered, purchaser agrees to pay for the required appraisal~~ of the property.

Seller, at his expense, agrees to meet any and all FHA or VA requirements and/or conditions to qualify the property for the above loan.

If a new FHA insured first trust is to be placed, purchaser and seller each agree to the following:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property for mortgage purposes of not less than $ _____, which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller.

Purchaser and seller agree to promptly, diligently, and in good faith, commit those acts necessary to obtain the financing provided for herein. When any new financing is required, this contract is contingent upon its procurement.

If a new VA guaranteed first trust is to be placed and the veteran-purchaser is unable to obtain the aforementioned VA guaranteed loan, this contract shall be declared null and void and his deposit shall be refunded.

The above conditions apply equally when financing, other than VA financing, is required. When a new first trust is to be placed and the purchaser is unable to obtain the new first trust after having made all reasonable efforts to do so, this contract shall be declared null and void and the deposit shall be returned, and no commission shall be due and payable to the agent.

This contract shall be binding upon the principals and their respective heirs, executors, administrators or assigns, and, when ratified by the seller, shall contain the final and entire agreement between the parties hereto, and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained. Seller may remove all drapes and drape rods and window shade panels in Living Room and Dining Room.

The following articles, now on the premises, shall be included in the above price: range, two refrigerators, portable dishwasher, disposal, central air conditioning system, power humidifier, electronic dust filter, washer, dryer, whatever wall-to-wall carpeting is now installed, all curtain rods and drape rods throughout the house, whatever window shades and blinds are now installed, except as stated above.

REALTORS ADCO

SHANNON & LUCHS

By /s/ Leonard R. Honnold Agent (SEAL)

We, the undersigned, hereby ratify, accept and agree to the above memorandum and acknowledge it to be our contract.

5 April, 1970

/s/ John W. McDonald Purchaser (SEAL)

/s/ Jean K. McDonald Purchaser (SEAL)

8 April, 1970

/s/ John D. Atkins, Jr. Seller (SEAL)

/s/ Martha R. Atkins Seller (SEAL)

REC 776 1/8/70 Certified a True Copy of Original Contract. [signature] Notary Public

My Commission Expires: Commission Expires 11/2/72

[*Title Omitted in Printing*]

AFFIDAVIT IN SUPPORT OF COMPLAINT IN INTERVENTION AND MOTION FOR A PRELIMINARY INJUNCTION

I, Martha Ruth Atkins, being first duly sworn, depose and say that I am 55 years of age, a citizen of the United States and a resident of Virginia since 1945. I have been married to John Dillard Atkins for 28 years and we have two adult children presently married and living elsewhere. My residence is located at 2546 Military Road, Arlington, Virginia.

I was formerly employed by the Federal Government for nine years and retired in July 1967 on total permanent disability under the Civil Service program. I have remained in that status continually from that time and am currently receiving civil service disability benefits as a total permanently disabled individual.

In March 1965, I was diagnosed, at the Bethesda Naval Hospital Neuropsychiatric Ward, as a manic depressive and underwent psychotherapy from 1960 until 1968. I have further undergone intermittent psychotherapy since that time.

Due to my mental disorder, I am presently unable to work.

/s/ Martha Ruth Atkins
MARTHA RUTH ATKINS

SUBSCRIBED AND SWORN TO before me this 16th day of June 1970.

/s/ Dorothy R. Cox
Notary Public, VA.

My commission expires March 25, 1973.

[*Certificate of Service Omitted in Printing*]

AFFIDAVIT IN SUPPORT OF COMPLAINT IN INTERVENTION AND MOTION FOR A PRELIMINARY INJUNCTION

I, John Dillard Atkins, Jr., being first duly sworn, depose and say that I am fifty-three years of age, a citizen of the United States and a resident of Virginia since 1945. I have been married to Martha Ruth Atkins for 28 years and we have two adult children presently married and living elsewhere. My domiciliary residence is located at 2546 Military Road, Arlington, Virginia, where my wife currently resides. My present residence is located in the Veterans Administration lodge, 542 Walnut Avenue, S.W., Roanoke, Virginia.

I am presently a patient in the Veterans Administration hospital in Salem, Virginia where I have been hospitalized continuously from January 15, 1969. On July 18, 1969, the hospital sent me to the Veterans Administration lodge (the lodge is a half-way house of sorts) on a trial visit, where I have remained until this time. I am still a patient of the Veterans Administration hospital in Salem, Virginia and, even though I am permitted to reside in the lodge, I have never been released. There are seven other residents in the lodge, all with psychiatric disorders. I was initially committed to the Veterans Administration Hospital in Salem, Virginia under a psychiatric diagnosis of extreme depression.

In December 1966, I applied for social security disability benefits and was awarded disability benefits in July 1967, after a six month waiting period.

My employment history began at 14 years of age when I commenced part time employment for the Atlantic and Pacific Tea Company. In 1934, at age 18, I began full time employment with the Civilian Conservation Corps and worked in that capacity until August 1936. At that time I enrolled at North Carolina State College at Raleigh, North Carolina and graduated with a Bachelors Degree in June 1940.

I entered the Marine Corps in July 1940 as a commissioned officer (second lieutenant). I remained on active status with the Marine Corps until April 1945. I did retire in 1943 because of a physical disability, but remained on

active duty until 1945. The disability was diagnosed, at the Norfolk Naval Hospital in Portsmouth, Virginia, as being psychiatric in nature and was apparently the same or a related disability to that which I am now suffering.

In July 1945, I began working for the Virginia Forrest Service and continued that employment until April 1947. In September 1947, I commenced teaching (mathematics) at a high school in Aldrie, Virginia. I completed the school year in June 1948 and at that time commenced a Masters Degree program at George Washington University. I attended George Washington University as a full time student and received a Master of Arts Degree in education in 1949.

In September 1949, I began work in the Arlington County School System as a teacher and continued employment in that capacity until December 1966. In the spring of 1966, I voluntarily entered Bethesda Naval Hospital in the neuro-psychiatric ward for approximately three months. In the fall of 1966, I began teaching again in Arlington County and continued until December 1966 when I entered the Veterans Administration (mental) Hospital at Perry Point, Maryland because of severe psychiatric problems. I remained at the hospital in Perry Point until January 7, 1969.

On January 8, 1969, I was committed by the Arlington County Court, Judge Dodge, to the Western State Hospital in Staunton, Virginia and later transferred, on January 18, 1969, to the Veterans Administration Hospital in Salem, Virginia, where I am still a patient at this time.

On April 10, 1967, my physician at the Veterans Administration Hospital, Perry Point, Maryland diagnosed me as essentially totally disabled. This diagnosis was confirmed by letter to the Virginia Supplemental Retirement System dated April 10, 1967. The prognosis was, in part, that it was highly unlikely that I could even reintegrate to a level that would qualify me to return to active teaching and that it was even inconsiderable that I would even be able to make a responsible social adjustment living outside of the psychiatric hospital. See Exhibit A attached to the complaint in intervention. This prognosis was made on the basis of continuous psychiatric treatment at the Perry Point Veterans Administration Hospital for approximately one year and a half (December 1966 until April 1967).

On January 5, 1970, Dr. Albert W. Moser (social security

psychiatrist) interviewed me for the purose of investigating to determine if I were eligible for continued disability. During this one hour interview, Dr. Moser read summaries on extracts of my original records for approximately twenty minutes and examined me for approximately thirty minutes. It appears that on the basis of this interview and examination I was notified by the Social Security Administration, on February 3, 1970, that the medical evidence in my case shows that my condition had improved to the extent that I was able to do substantial gainful employment in January 1970. Accordingly, the last disability benefit to which I was entitled was for the month of March 1970. Exhibit B attached to the complaint in intervention.

On February 4, 1970, I directed a letter to the Social Security Administration advising them that, contrary to their assertion that I was able to do substantial gainful work in January 1970, my last date of gainful employment was December 13, 1966 and that I am now and have continously been a patient at the Veterans Hospital, Salem, Virginia since January 16, 1969. I have, as of this date, never been discharged from that hospital. See Exhibit C attached to complaint in intervention.

On the day after receipt of the letter terminating my social security benefits, February 4, 1970, my wife contacted the office of Congressman Joel T. Broyhill, requesting some form of help. In response to our request, Congressman Broyhill sent a telegram on February 5, 1970 to the Social Security Administration advising them that I was totally disabled and requesting that his office be informed concerning my status. Exhibit D attached to complaint in intervention.

In support of this effort, I requested Dr. Robert H. Hickey, psychologist and Dr. John Garner, M.D., both located at the Veterans Administration Hospital to send letters to the Social Security Administration concerning my condition. Their letters indicated that I should never teach again but voiced no conclusion in respect to other forms of employment.

Shortly after receiving the letter of termination dated February 3, 1970, my wife telephoned the Social Security Administration in three different instances. In each instance she talked to a different person. On the last occasion, my wife explained to Commissioner's Ball's Assistant that if

we did not know if there was any chance of reinstatement or even reconsideration by April 1, 1970, we would have to sell our home. Thereafter my wife and I directed approximately ten letters to the Social Security Administration requesting information in regard to my status and whether I would be reinstated by April 1, 1970, without ever receiving any response or reply by the Administration other than a letter to Congressman Broyhill's office advising that my termination was under investigation, but failing to comment on whether or not a decision would be reached by the crucial terminating date of April 1, 1970.

On April 23, 1970, the Social Security Administration advised Congressman Broyhill by telegram that they had determined that I was still disabled within the meaning of the law. Exhibit E attached to the complaint for intervention. My condition and situation from January 1970, when the letter of termination on February 3, 1970 stated I was medically able to do substantial employment, until reinstatement on April 21, 1970, remained virtually the same. During this period I remained and am still a patient at the Veterans Administration Hospital, Salem, Virginia, residing in the Veterans Administration lodge as a mental patient. Nevertheless, I was forced to undergo the severe mental strain of fearing the imminent termination of my social security benefits by March 1970 without ever being assured by the Social Security Administration that my case would even be reconsidered or reviewed by that time.

On April 30, 1970, I received a letter from the Social Security Administration, dated April 29, 1970, advising that upon review of the evidence, I am still legally disabled. However, I was further advised that my case will again be reviewed about September 1971. Exhibit F attached to the complaint. It appears that I can again look forward, at that time, to the prospect of another possible termination, without a hearing and without even any assurance by law that my case will be reconsidered before by benefits are terminated. To live under such circumstances is difficult for a healthy individual, but for a person such as myself, suffering from a mental disorder resulting in extreme tension and severe depression, it is impossible.

The consequences of the Social Security Administration's determination to terminate my benefits as of March 1970 have been catastrophic. My total monthly income consists of

statutory benefits received from social security, V.A. compensation and Virginia State retirement. The prospective loss of my social security benefits would have seriously impaired my ability to maintain my current obligations. Consequently, my wife took a third trust on our house on March 17, 1970, with Shannon and Luchs Company, for $6,000.00 and sold our home on April 5, 1970, Exhibit G attached to the complaint for intervention.

/s/ John D. Atkins, Jr.
JOHN D. ATKINS, JR.

SUBSCRIBED AND SWORN to before me this 16th day of June 1970.

/s/ Dorothy R. Cox
Notary Public, VA.

My commission expires: March 25, 1973.

[*Certificate of Service Omitted in Printing*]

[*Title Omitted in Printing*]

DEFENDANT'S OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION AND TO JOIN AS PARTY PLAINTIFF AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR CERTIFICATION OF ACTION AS MAINTAINABLE AS A CLASS ACTION

John Dillard Atkins, Jr. (hereinafter "applicant") seeks to intervene in this action under Rule 24, F.R.Civ.P. Both plaintiff Radie P. Wright and applicant John D. Atkins, Jr., also seek to have this action declared a class action pursuant to Rule 23, F.R.Civ.P.

This action concerns the question of whether a recipient of disability benefits is entitled to an evidentiary hearing before his disability benefits are suspended under Title II of the Social Security Act.

Applicant, John D. Atkins, Jr., who has been receiving disability insurance benefits under Title II of the Social Security Act since 1967, received a letter dated February 3, 1970, from the Social Security Administration suspending his disability benefits effective April 1, 1970. The suspension was based on the fact that the "medical evidence in your case shows that your condition has improved to the extent that you became able to do substantial gainful employment in January 1970." This determination had apparently been made on the basis of an interview and examination conducted by a psychiatrist for the Social Security Administration on January 5, 1970. On April 29, 1970, after applicant had requested a reconsideration of the decision to suspend his disability payments, the Administration reinstated his benefits, commencing with his April 1970 check. Thus, applicant has received a disability check from the Social Security Administration for *every* month since 1967. The Administration also indicated in its letter that it had "scheduled your claim for another review about September 1971."

The defendant, Secretary of Health, Education and Welfare, asserts that the applicant's motion to intervene as a

plaintiff should be denied because his "claim . . . and the main action do not have a question of law or fact in common." Rule 24(b)(2), F.R.Civ.P.

As indicated in the preceding discussion, applicant has continued, and *still* is, receiving disability insurance benefits from the Social Security Administration since 1967. In the instant case, plaintiff Radie P. Wright's benefits were suspended, and plaintiff brought this action seeking a temporary restraining order preventing the Social Security Administration from *continuing* to suspend his benefits. The Court granted that motion on May 14, 1970. In applicant's case, he is *presently* receiving disability benefits, and therefore, applicant is not and will not suffer irreparable injury. Applicant further claims he faces the "prospective loss of social security income in *September 1971*" (emphasis supplied) and that he will suffer irreparable injury to his health. Such a claim is speculative and total conjecture on applicant's part. There is no indication whatsoever that the Social Security Administration will suspend his benefits in September 1971. It will only *review* his claim at that time.

Since there is no relief which this Court can give applicant at this time, and the factual situation in applicant's case is entirely different from that of the plaintiff, intervention should be denied. Furthermore, there is no "question of law in common," for as demonstrated above, there is no evidentiary hearing necessary in applicant's case since his benefits have already been restored.

For the foregoing reasons, applicant's motion to intervene should be denied.

The motions of the plaintiff and the applicant to certify this action as a class action should be denied because plaintiff and applicant do not meet the prerequisites to a class action. Rule 23(a), F.R.Civ.P. Two of the prerequisites are that there must be "questions of law or fact common to the class," Rule 23(a)(2), and "the claims . . . of the representative parties are typical of the claims . . . of the class . . .." Rule 23(a)(3).

As evidenced above, the facts in each particular disability suspension case are quite different. As in applicant's case, there may not be any legal question for the Court to decide. Thus the question of fact and law, if any, in applicant's case are *not* common to the class, and the claims of plaintiff and applicant are *not* typical of the claims of the

class. Plaintiff and applicant have not met the prerequisites of a class action. Rule 23(a), F.R.Civ.P.

For the foregoing reasons, applicant's motion to intervene as a plaintiff and the motions of plaintiff and applicant to certify this case as a class action should be denied.

/s/
THOMAS A. FLANNERY
United States Attorney

/s/
JOSEPH M. HANNON
Assistant United States Attorney

/s/
LAWRENCE S. MARGOLIS
Assistant United States Attorney

[*Certificate of Service Omitted in Printing*]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RADIE P. WRIGHT, *et al.*, *Plaintiffs*, v. ROBERT H. FINCH, *Defendant.*	Civil Action No. 1457-70

[Filed, Aug 21, 1970 ROBERT M. STEARNS, *Clerk*]

ORDER

Upon consideration of the motion of John D. Atkins for leave to intervene as party-plaintiff and upon further consideration of the application of plaintiff Radie P. Wright for leave to maintain his action as a class action under Rule 23(b)(2), Fed. R. Civ. P., it is by the Court this 21st day of August, 1970.

ORDERED that the motion to intervene be and the same hereby is granted under the provisions of Rule 24(b), and it is further

ORDERED that the application of plaintiff Radie P. Wright that the action be maintained as a class action be and the same hereby is granted under the provisions of Rule 23(b)(2), Fed. R. Civ. P.

/s/ Oliver Gasch
Judge

[*Title Omitted in Printing*]

AFFIDAVIT OF BERNARD POPICK

STATE OF MARYLAND
COUNTY OF BALTIMORE } ss

I, Bernard Popick, being duly sworn, depose that I am Director of the Bureau of Disability Insurance of the Social Security Administration. In my official capacity I have legal custody of certain records, documents, and other information established and maintained by the Department of Health, Education, and Welfare, pursuant to Title 42, United States Code, section 405.

Section 205(a) of the Social Security Act, as amended, 42 U.S.C.A., section 405(a) provides that:

> "The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder."

Section 221(a), of the Social Security Act, 42 U.S.C. 421(a), provides in pertinent part:

> "(a) In the case of any individual, the determination of whether or not he is under a disability * * * and of the day such disability began, and the determination of the day on which such disability ceases, shall * * * be made by a State agency pursuant to an agreement entered into under subsection (b). * * * any such determination shall be the determination of the Secretary for purposes of this title.
>
> * * * * *
>
> "(c) The Secretary may on his own motion review a determniation, made by a State agency pursuant to an agreement under this section, that an individual is under a disability * * *."

Social Security Administration Regulations No. 4, section 404.1527, 20 C.F.R. 1527, promulgated by the Secretary pursuant to the statutory authority of section 205(a) of the Act, supra, provides:

"Upon reasonable notice of the time and place thereof, any individual alleged to be under a disability shall present himself for and submit to physical or mental examinations or tests, at the expense of the Administration, by a physician or other professional or technical source designated by the Administration or the State agency authorized to make determinations as to disability. If any such individual fails or refuses to present himself for any examination or test, such failure or refusal, unless the Secretary determines that there is good cause therefor, shall be a basis for determining that such individual is not under a disability. Religious or personal scruples against medical examination or test shall not excuse an individual from presenting himself for a medical examination or test."

Social Security Administration Regulation No. 4, section 404.1528, 20 C.F.R. 404.1528, provides:

"An individual for whom a period of disability has been established or who has been determined to be entitled to disability insurance benefits or to child's widow's or widower's insurance benefits based on disability, upon reasonable notice, shall, if requested to do so, present himself for and submit to examinations or tests as provided in § 404.1527, and shall submit medical reports and other evidence necessary for the purpose of determining whether such individual continues to be under a disability.

Social Security Administration Regulations No. 4, section 404.1531, 20 C.F.R. 404.1531 provides:

"An individual for whom a period of disability has been established or who is entitled to disability insurance benefits or to child's, widow's or widower's insurance benefits based on disability, shall notify the Administration promptly if:

"(a) His condition improves;

"(b) He engages in any work activity or there is an

increase in the amount of such activity or his earnings therefrom; or

"(c) He has been in a hospital or similar institution and is discharged therefrom."

Social Security Administration Regulations No. 4, section 404.1539, 20 C.F.R. 404.1539 provides in pertinent part:

"Where it has been determined that an individual is under a disability * * * the 'disability' shall be found to have ceased:

"(a) In the case of an individual entitled to disability insurance benefits or child's insurance benefits based on disability, in the earlier of the following:

"(1) The month in which the impairment, as established by the medical or other evidence, is no longer of such severity as to prevent him from engaging in any substantial gainful activity or, in the case of disability under § 404.1501(a)(1)(ii), no longer constitutes statutory blindness; or

"(2) The month in which the individual has regained his ability to engage in substantial gainful activity, or, in the case of disability under § 404.1501(a)(1)(ii), to utilize in substantial gainful activity skills or abilities comparable to those of some gainful activity in which he had previously engaged with some regularity over a substantial period of time, as demonstrated by work activity after application of the provisions in § 404.1536; * * *."

I have examined the files maintained by the Social Security Administration pertaining to John D. Atkins, Jr. Social Security Account Number 246-12-5511, and have ascertained the following:

(1) John D. Atkins, Jr. applied for disability insurance benefits on May 2, 1967, alleging disability beginning December 11, 1966, by reason of a mental impairment. This claim was allowed by the Social Security Administration pursuant to a determination dated August 17, 1967. Although disability was established beginning in December 1966 cash benefits were not payable until July 1967; this is because section 223 of the Social Security Act (42 U.S.C. 423) imposes a "waiting period" of six consecutive calen-

dar months of disability before cash benefits are payable. Monthly benefits were mailed to John D. Atkins, Jr. at the VA Hospital, Perry Point, Maryland where Mr. Atkins was at that time a patient. Mr. Atkins was advised at the time he applied for benefits that discharge from the hospital might be reason for re-evaluating his entitlement to disability benefits.

(2) In September 1969, when John Atkins' August, 1969 benefit check was returned from the Perry Point Hospital as undeliverable, the Administration began a continuing disability investigation in accordance with Social Security Regulations No. 4, section 404.1528, supra. This investigation was conducted by the Towson, Maryland Social Security Office. At that time the disability claim folder (i.e. a folder containing all pertinent documents on any given social security claim) was forwarded by the Social Security Administration Bureau of Disability Insurance, Baltimore, Maryland, to the Towson, Maryland District Office. The Perry Point Hospital advised the Administration that Mr. Atkins had been discharged January 7, 1969. On October 30, 1969 Mr. Atkins' wife advised that Mr. Atkins was a patient at the VA Hospital in Salem, Virginia but living as an outpatient with seven other patients at 542 S.W. Walnut Avenue, Roanoke, Virginia.

(3) A Social Security Administration representative interviewed Mr. Atkins on November 7, 1969. Mr. Atkins told the interviewer that after leaving the Perry Point Hospital on January 7, 1969, he entered the Western State Hospital, Staunton, Virginia, and later entered the VA Hospital in Salem on January 18, 1969. Mr. Atkins further stated that on July 22, 1969 he left the Salem Hospital on "trial visit" status and currently resided with seven other patients at the Roanoke, Virginia address as part of a therapy and treatment program sponsored by the hospital. At this time Mr. Atkins requested on a standard Social Security Administration form used for this purpose, that his checks be mailed to his home address in Arlington, Virginia.

(4) The Bureau of Disability Insurance, Baltimore, Maryland then forwarded its disability claim folder on this claim to the Virginia State Agency for a determination of continuing disability. This agency obtained medical evidence from the Western State Hospital and the Salem Hospital and arranged for a consultive psychiatric exami-

nation of Mr. Atkins, as it was authorized to do by Social Security Regulations No. 4, section 404.1527, supra. Mr. Atkins was advised of this scheduled examination (to be conducted by Dr. Albert Moser) by letter dated December 18, 1969. Mr. Atkins at first objected to the examination by Dr. Moser, but, after discussing it further with Administration representatives on December 29, 1969 and with Dr. Hickey, his psychologist at the Salem Hospital, on December 31, 1969, Mr. Atkins agreed to the examination. The examination was conducted on January 5, 1970. Based on the medical evidence obtained from the Salem VA Hospital, the Western State Hospital and on the report submitted by Dr. Moser, the Virginia State Agency determined on January 16, 1970 that the plaintiff's disability had ceased as of January, 1970. This determination was reached on the ground specified in Social Security Regulation 404.1539 (a)(1), supra, i.e. that medical and other evidence showed that the medical impairment was no longer of such severity as to prevent the claimant from engaging in substantial gainful activity. The disability folder in this case was returned to the Bureau of Disability Insurance, Baltimore, Maryland, the same date.

(5) While the investigation of continuing disability was being made, which required that the disability claim folder containing Mr. Atkins' records be in the investigating offices, Mr. Atkins had written two letters dated September 8, 1969, and September 27, 1969, requesting that his address for purposes of receiving his monthly checks be changed from the Perry Point Veterans Administration Hospital to his home address in Arlington, Virginia. On October 13, 1969, Mr. Atkins completed a standard Social Security Administration questionnaire requesting re-issuance of his August and September checks. On October 26, 1969 he again requested that the two checks be mailed to him at his home address in Arlington, Virginia. On October 25, 1969 the Alexandria, Virginia Social Security Office notified the Social Security Bureau of Disability Insurance in Baltimore that Mr. Atkins had not received his August and September checks. The case was designated "critical" and the search was made for the disability folder, since changes in payment actions normally require the presence of the claims folder. On December 8, 1969, the disability claim folder was located in the Virginia State Agency and special procedures were

undertaken to pay the August and September checks without the claim folder. The combined checks were sent to Mr. Atkins on December 11, 1969.

(6) On January 29, 1970 the Bureau of Disability Insurance approved the Virginia State Agency's determination that because Mr. Atkins' disability had terminated on January 29, 1970 his disability benefits must be terminated as of the end of March, 1970. This decision was made pursuant to section 223(a) of the Social Security Act, 42 U.S.C. 423(a), which provides that entitlement to disability insurance benefits ends with the third month following the month in which disability ceases. Thus under the Administration's decision Mr. Atkins' benefits were payable through March, 1970. Mr. Atkins was notified of the Administration's decision to terminate his benefits by letter dated February 3, 1970 mailed to his Arlington, Virginia address. In this letter Mr. Atkins was notified of his right to a formal reconsideration of his claim as proved in Social Security Administration Regulations No. 4, section 404.911, 20 C.F.R. 404.911 and his right to submit additional evidence in support of his claim. On February 4, 1970, Mr. Atkins wrote to the Administration stating reasons why he believed his disability had not terminated, requesting formal reconsideration, and advising that he intended to submit additional evidence (medical reports from the Salem Hospital). Also on February 4, 1970, Mr. Atkins' wife called the Bureau of Disability Insurance, Baltimore, to report that Mr. Atkins was still in the hospital and was not working. On February 5, 1970, Bureau of Disability Insurance personnel telephoned the Arlington, Virginia Social Security Office and ascertained that the claimant was still residing in Roanoke, Virginia while his wife remained in Arlington, Virginia. After considering the statements of Mr. Atkins and his wife and the information obtained from the Arlington Social Security Office, a second letter notifying the claimant that his benefits would end after March, 1970 was mailed on February 11, 1970 to Mr. Atkins' Roanoke address. (This letter was not a denial of Mr. Atkins' request for formal reconsideration but rather reiterated the Administration's earlier notification that benefits would be terminated and that Mr. Atkins could have this decision reconsidered.)

(7) On February 5, 1970 Congressman Joel T. Broyhill

telegraphed the Social Security Administration, Bureau of Disability Insurance, Baltimore, Maryland questioning its determination to terminate Mr. Atkins' disability benefits. On February 13, Social Security Administration personnel explained the Administration's decision by telephone to a member of Congressman Broyhill's staff. On March 5, 1970, the Administration mailed a letter to Congressman Broyhill confirming and supplementing this telephone conversation. It was necessary for the Bureau of Disability Insurance to retain Mr. Atkins' disability claim folder containing all documents in this case until the March 5, 1970 correspondence to Congressman Broyhill was completed so that his inquiries might be satisfactorily answered.

(8) The disability claim folder was then forwarded to the Roanoke, Virginia Social Security Office in order that that office could contact Mr. Atkins, supply him with a more detailed explanation of the decision to terminate his benefits and also to offer him the opportunity to submit any evidence he wished in support of his claim. When this was done the claim folder was then forwarded to the Virginia State Agency so that pursuant to Mr. Atkins' request they might formally reconsider their decision to terminate his disability benefits. Meanwhile the Virginia State Agency had received additional evidence consisting of a letter dated February 16, 1970, signed by Dr. Hickey, clinical psychologist at the Salem Hospital. This letter noted that Mr. Atkins' illness still compelled him to live in a sheltered situation and that at the hospital half-way home where he lived in Roanoke he received room and board, but no other remuneration in return for handling the payment of patients' bill and counseling other former patients. After considering this evidence and statements submitted by Mr. Atkins himself dated March 20, 1970, March 21, 1970 and April 14, 1970 and weighing this additional evidence in light of indications in Dr. Moser's report that remission of Mr. Atkins' illness was only partial, the Virginia State Agency determined that Mr. Atkins continued to be disabled and that its previous decision terminating disability benefits as of the end of March, 1970 should be reversed. This decision was made April 1, 1970, and approved by the Bureau of Disability Insurance in Baltimore April 15, 1970.

(9) As a result of the State Agency's decision to continue benefits, the April benefit was paid to Mr. Atkins in May.

1970. Since a benefit for a given month is always actually paid the following month, Mr. Atkins received his April benefit on time and there was no break whatsoever in the continuity of benefit payments to him. Mr. Atkins is currently being paid benefits.

(10) By letter dated April 29, 1970 the Bureau of Disability Insurance notified Mr. Atkins that his disability benefits were being continued. Mr. Atkins was also advised that his case would be re-evaluated in September, 1971 to determine whether his disability still continued. Then in response to inquiries by Mr. Atkins and Congressman Broyhill it was explained that such re-evalnation of Mr. Atkins' condition was scheduled for September 1971 because his condition was one which could reasonably be expected to improve by September, 1971. The decision to re-evaluate at that time is consistent with the applicable law. Social Security Administration Regulations No. 4, section 404.1528, supra.

/s/ Bernard Popick
BERNARD POPICK
Director, Bureau of Disability Insurance

Subscribed and sworn to before
me this 24th day
of August 1970.

/s/ Wilson R. Touler
Notary Public
My Commission expires July 1, 1974

United States District Court for the District of Columbia

(Civil Action No. 1457-70)

RADIE WRIGHT, ET AL., PLAINTIFFS

v.

ROBERT H. FINCH, DEFENDANT

Before ROBB, Circuit Judge, MATTHEWS, Senior District Judge, and GASCH, District Judge.

GASCH, District Judge: This class action [1] was initiated by plaintiff Radie Wright in behalf of all recipients of disability insurance benefits under Title II of the Social Security Act.[2] Radie Wright suffers from chronic gastritis, cirrhosis of the liver, hepatic decompensation arthritis and a heart condition. He was advised by his doctors that he could no longer work as a laborer because of his condition and his application for disability payments was approved by the Social Security Administration in May, 1966. Since that time he has drawn various amounts for his support and the support of his wife and two sons; his current payments are $126.70 per month for his own support plus smaller amounts for the support of his sons. In 1968, while still drawing benefit pay-

[1] The situation presented here meets the criterion of a class action maintainable under Rule 23(b)(2), Fed. R. Civ. P.

[2] 42 U.S.C. §§ 401 *et seq.* (1964).

ments, he returned to work and earned $343.32; he continued to work in 1969 and earned $4,098.49. He has not worked since December, 1969. The Administration checks earnings postings against the rolls of disability beneficiaries. This check revealed that Radie Wright had been employed. Following additional field investigation, including verification of the earnings with the employers and an interview with plaintiff, the Administration determined that because he had demonstrated ability to engage in substantial gainful activity that Radie Wright might no longer be eligible for disability payments. He was notified by letter on April 14, 1970, that his payments were being suspended as of that time pending further investigation of his eligibility.[3]

Intervenor-plaintiff, John D. Atkins, Jr., is currently a psychiatric patient of the Veterans Administration Hospital in Salem, Virginia. He has been under psychiatric care since December, 1966, and was found eligible for disability benefits by the Administration in July, 1967. He was informed by letter on February 3, 1970, that it had been determined that his disability had ceased as of January, 1970, apparently on the basis of an examination of the recipient and his medical records conducted by a doctor for the Social Security Administration in January, 1970. His benefits were to be terminated after the March, 1970, payment. This decision was subsequently reconsidered and Atkins was reinstated by the Administration. He is still subject to the suspension provisions of the Act.

Plaintiffs contend that section 225 of the Act[4] is unconstitutional in that it deprives them of property

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[3] The notice given plaintiff was a form notice which explained that his benefit payments had been stopped because "your trial work period expired."

[4] *Id.*, § 425.

without due process of law.[5] That section of the Act provides:

> If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to [disability] benefits . . . may have ceased to be under a disability, the Secretary may suspend the payment of benefits . . . until it is determined . . . whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased.

In its recent decision in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the Supreme Court held that an evidentiary hearing was required prior to terminating welfare benefits under Title IV of the Act. The challenged section quoted above must similarly be held constitutionally deficient in that disability payments may be suspended without prior proceedings in which the recipient may participate.

I.

In *Goldberg* and the companion case of *Wheeler* v. *Montgomery*,[6] the Supreme Court has declared that benefits received under Title I (Old Age Assistance) and Title IV (Aid to Families with Dependent Children) of the Social Security Act are a matter of statutory entitlement for persons qualified to receive them.[7] Therefore, suspension or termination of these benefits are subject to the requirements of procedural

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[5] Since plaintiffs seek an injunction restraining the enforcement of an act of Congress due to an alleged constitutional defect, a three-judge court was convened pursuant to 28 U.S.C. §§ 2282, 2284 (1964).

[6] 397 U.S. 280 (1970).

[7] 397 U.S. 262.

due process. There is no significant difference between entitlement to those benefits and benefits under Title II (Old Age, Survivors and Disability Insurance Benefits).[8] It follows that disability beneficiaries must be accorded procedural due process in suspension and termination proceedings.[9]

II.

The exact procedures demanded by due process are determined by the circumstances of the particular situation. The determination of the appropriateness of the procedures requires balancing the governmental function involved against the private interest affected." The Court stated the test in *Goldberg*: "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."[10] In *Goldberg*, the crucial factor was that "termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live

[8] Eligibility for Title I and Title IV benefits is based on the need of the recipient whereas Title II benefits are paid to individuals who are insured under the Act and meet the age or disability requirements. 42 U.S.C. §§ 402, 423 (1964). This distinction is not significant in determining the procedural rights of the recipient. *See* text accompanying note 12, *infra*.

[9] *See Flemming v. Nestor*, 363 U.S. 603 (1960). "The interest of a covered employee under the [Social Security Act] is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause." *Id.*, at 611.

[10] *See, e.g., Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886 (1961).

[11] 397 U.S. 262–63 (citations omitted).

while he waits."[12] This factor may not be as great in the case of a disability beneficiary as it is in the welfare recipient's situation. Disability beneficiaries are not, as are welfare recipients, dependent by definition on benefit payments for their livelihood. But a disability beneficiary is by definition unable to engage in substantial gainful activity and he would, therefore, be liable to sustain grievous loss while awaiting the resolution of his claim.

The countervailing governmental interests raised in support of the summary procedures are the protection of the Federal Disability Trust Fund from depletion due to payments to ineligible recipients pending determination of their status and the administrative expense involved in providing pre-termination review. These fiscal and administrative expenses to the government, whatever their magnitude, are insufficient justification considering the crippling blow that could be dealt to an individual in these circumstances. It is precisely this type of balance which led the *Goldberg* Court to require pre-termination review.

The ex-parte suspension power granted to the Secretary by section 225 is summary adjudication that is inconsistent with the requirements of due process. A disability beneficiary must be given adequate notice and an opportunity to participate in the determination proceedings prior to the suspension of benefits.

III.

The Supreme Court concluded that a "fair hearing" for welfare recipients must include timely and adequate notice, an opportunity for the recipient to present his case orally and the right to confront and cross-examine adverse witnesses. In determining the

[12] *Id.*, at 264.

type of hearing necessary, the Court relied on its previous holding in *Greene* v. *McElroy*.[13]

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact finding, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, *it is even more important where evidence consists of the testimony of individuals whose memory might be faulty or who in fact, might be perjurors or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy.* We have formalized these protections in the requirements of confrontation and cross-examination.[14]

The evidentiary basis for the determination of eligibility for welfare benefits which was considered by the Court in *Goldberg* in delineating the form of hearing required in that case differs from the situation presented here. The regulations[15] of the Social Security Administration provide that disability benefits can be terminated when medical or other evidence indicates that the impairment has ceased or when the individual has engaged in substantial gainful employment. The evidence to support these findings consists of medical reports and certification by employers

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[13] 360 U.S. 474 (1957).

[14] *Id.*, at 496 (emphasis added).

[15] 20 C.F.R. § 404.1539.

that the individual has been employed by them.[16] If timely notice is given the recipient specifying the grounds for his proposed suspension and he is given reasonable opportunity to examine the documentary evidence supporting the action, there would be no necessity to hold a formal hearing where the medical personnel or the employers would have to be made available for cross-examination. The affected recipient should of course be given the opportunity to respond and submit evidence supporting his claim. The resolution of conflicting evidence at this point should be made by an impartial decision maker.[17] If the recipient has submitted some evidence that contradicts that possessed by the Administration, a hearing could be held to resolve those issues. The Social Security Administration should have an opportunity to develop presuspension proceedings[18] which afford

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[16] The Bureau of Data Processing and Accounts of the Social Security Administration which maintains earnings records of all individuals covered under the Act, checks earnings posted against the rolls of disability beneficiaries. The Administration's Claims Manual instructs field personnel to contact employers for whom the disability beneficiary has worked while receiving benefits. Further, section 6708 of the Manual states that "benefits should not be suspended based solely on a report from an informant."

[17] The investigating officer who has compiled the record on which the decision is to be based should not make the final decision.

[18] The Secretary has formulated procedures for determining and reviewing rights with respect to the establishment and continuance of a period of disability. 20 C.F.R. Part 404, subpart J. These review procedures only become applicable after the administrative decision that the disability has ceased, 20 C.F.R. § 404.905(d), but could form a basis for the presus-

fundamental due process to the recipient before this Court rules on the adequacy of the details of that procedure."

I am authorized to state that Circuit Judge Robb concurs in this opinion.

OLIVER GASCH,
Judge.

JANUARY 6, 1971.

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pension proceedings which this decision requires. These regulations require that when an initial determination is made that the party to whom the determination applies be notified of the determination, of the basis of the determination, and informed of his right to request reconsideration. 20 C.F.R. § 404.907. The party may submit additional material for the purposes of the reconsideration. After initial determination and reconsideration, the individual has a right to a hearing before an impartial hearing examiner. 20 C.F.R. § 404.916. These regulations do not now apply to actions under 42 U.S.C. § 425, since suspension of benefits pending an investigation of continued eligibility is not an initial determination under the regulations. 20 C.F.R. § 404.906.

[15] The Supreme Court in *Goldberg* recognized "the importance of not imposing upon the . . . government . . . any procedural requirements beyond those demanded by rudimentary due process." 397 U.S. at 267. *See also* the dissenting opinion of Mr. Chief Justice Burger in *Wheeler* v. *Montgomery*, 397 U.S. 282 (1970).

MATTHEWS, Senior District Judge (concurring and dissenting in part): I concur in large part in the opinion, *Goldberg* v. *Kelly*, 397 U.S. 254 (1970; *Wheeler* v. *Montgomery*, 397 U.S. 280 (1970). In *Goldberg* the Supreme Court held that a welfare recipient, in addition to timely and adequate notice detailing the reasons for a proposed termination of benefits, must have "an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." Page 268. I respectfully dissent from so much of the opinion as seems to suggest that the procedural requirements of due process may be satisfied with something less than the "opportunity" specified in *Goldberg*.

BURNITA SHELTON MATTHEWS,
United States Senior District Judge.

United States District Court for the District of Columbia

(Civil Action No. 1457-70)

RADIE WRIGHT, ET AL., PLAINTIFFS

v.

ROBERT H. FINCH, DEFENDANT.

ORDER

Pursuant to the opinion filed in this case on January 6, 1971, which opinion is adopted as the Court's Findings of Fact and Conclusions of Law, it is by the Court this 12th day of February, 1971,

ORDERED that Section 225 of the Social Security Act be and it is hereby declared unconstitutional and void in that it denies recipients procedural due process in suspension proceedings, and it is further

ORDERED that plaintiff Radie Wright continue to receive Social Security Disability benefits until such time as his eligibility is suspended in accordance with the procedures outlined in the Opinion of January 6, 1971, and it is further

ORDERED that no Social Security Disability beneficiary be suspended without being afforded adequate notice and an opportunity to participate in the determination proceedings, and it is further

ORDERED that the Social Security Administration promulgate regulations governing the suspension of disability benefits to recipients which shall conform

to the requisites of procedural due process as outlined in the Opinion filed in this case, and it is further

ORDERED that plaintiffs' motion for summary judgment be and it is hereby granted to the extent reflected by the foregoing orders, and it is further

ORDERED that defendant's motion for summary judgment be and it is hereby denied.

OLIVER GASCH,
Judge.

[*Title Omitted in Printing*]

MOTION FOR STAY PENDING APPEAL

Defendant, by his undersigned attorneys, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure, respectfully moves that the Court's Order dated February 12, 1971, declaring Section 225 of the Social Security Act to be unconstitutional and ordering that no social security disability beneficiary be suspended without being afforded adequate notice and an opportunity to participate in the determination proceedings, be stayed pending defendant's appeal therefrom.

In support of this motion, the Court is respectfully referred to the memorandum filed herewith.

Respectfully submitted,

/s/
L. PATRICK GRAY, III
Assistant Attorney General

/s/
THOMAS A. FLANNERY
United States Attorney

/s/
HARLAND F. LEATHERS

/s/
DAVID EPSTEIN
Attorneys, Department of Justice
Attorneys for Defendant

[*Title Omitted in Printing*]

OPPOSITION TO MOTION FOR STAY PENDING APPEAL

Plaintiffs, by their undersigned attorneys, respectfully oppose defendant's motion to stay the Court's Order dated February 12, 1971 pending appeal therefrom.

Plaintiffs have stated grounds for their opposition in a memorandum filed herewith, and respectfully refer the Court to that memorandum.

Respectfully submitted,

/s/ E. Calvin Golumbic
E. CALVIN GOLUMBIC
Lawcor Project
Institute for Studies in Justice and Social Behavior
American University Law School
Washington, D.C. 20016
686-2630

/s/ Edward E. Schwab
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Neighborhood Legal Services Program
36 N Street, S.E.
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544-5000
Attorneys for Plaintiffs

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NOTICE OF APPEAL

Notice is hereby given that all plaintiffs and intervenor-plaintiff hereby appeal to the Supreme Court of the United States, pursuant to 28 U.S.C. § 1253, from the final order of the Court entered in this section on the 12th day of February, 1971.

/s/ Edward E. Schwab
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[*Title Omitted in Printing*]

NOTICE OF APPEAL

Notice is hereby given that the defendant hereby appeals to the Supreme Court of the United States, pursuant to 28 U.S.C. § 1253, from the order of this Court entered February 12, 1971, in favor of the plaintiffs and against the defendant.

THOMAS A. FLANNERY,
United States Attorney.
JOHN A. TERRY,
Assistant United States Attorney.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RADIE WRIGHT, *et al.*, *Plaintiffs*, v. ROBERT H. FINCH, *Defendant.*	Civil Action No. 1457–70

[Filed Mar. 24, 1971, JAMES F. DAVEY, *Clerk*]

ORDER

Upon consideration of defendant's motion for stay pending appeal and the opposition thereto, it is by the Court this 24th day of March, 1971,

ORDERED that the Order of February 12, 1971, be and it is hereby stayed pending appeal, *provided* that plaintiff Radie Wright continue to receive Social Security Disability benefits until such time as his eligibility is suspended in accordance with the procedures outlined in the Opinion of January 6, 1971.

/s/ Roger Robb
Circuit Judge

/s/ Burnita Shelton Matthews
Senior District Judge

/s/ Oliver Gasch
District Judge

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 and 70-5211

ELLIOT L. RICHARDSON, *Secretary of Health, Education and Welfare,*

Appellant,

v.

RADIE WRIGHT, *et al.;* and

RADIE WRIGHT, *et al.,*

Appellants,

v.

ELLIOT L. RICHARDSON, *etc.*

APPEALS from the United States District Court for the District of Columbia.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of one hour is allotted for oral argument.

October 12, 1971

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